POLITICAL SCIENCE

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PREFACE

Considerable difference of opinion exists as to the best approach to the study of political science. Some prefer to begin with a description of American government, since it deals with things with which students are already somewhat familiar. Others favor a comparative study of the governments of a number of the most important modern states, using this material for purposes of contrast and the deduction of certain general principles. The author believes that the best introduction to the field consists in a study of the state as an institution, giving attention to its nature, its origin and development, its organization and its functions, its institutions and its theories, its relation to the individuals that compose it and to other states. From this background of general principles the student may then pass to the more specialized sub-divisions of the field. For that purpose this book is written.

Part I, "The Nature of Political Science," attempts to place this study in the general field of human knowledge and to consider the content and methods of political science and its relation to closely allied sciences. Part II, "The Nature of the State," is concerned with the essential elements of which the state is composed, with the historical origin and evolution of states, with the general nature of political theory, and with the relation of the state, internally, to its individual members. Part III, "The Organization of the State," deals with the structure of government and the principles and methods in accordance with which government is created. Part IV, "The Functions of the State," discusses the activities of the state and the various theories as to the proper nature and extent of state action. Part V, "The Relation of State to State," gives attention to the external relations of states, the nature of international law, and the forms of international association. Because of the limitation of space in outlining so wide a field in a single volume, extensive references for further reading are placed at the end of each chapter.

PART III . THE ORGANIZATION OF THE STATE

POLITICAL SCIENCE

PART I . THE NATURE OF POLITICAL SCIENCE

CHAPTER I

THE NATURE AND METHODS OF POLITICAL SCIENCE

OUTLINE

Background of Political Science. In order to understand the nature and scope of political science, it is desirable to outline the field of knowledge that it covers, to survey the methods that it uses, and to indicate the boundary lines that separate it from other, closely related sciences. It is also necessary to define certain fundamental political terms. Unlike the precise and exact terminology of the natural sciences, the terms of political science are often used carelessly in ordinary speech, are given double meanings, and are frequently distorted deliberately by being given a favorable or an unfavorable connotation for partisan or national purposes.

Nature of Political Science. Political science may be defined as the science of the state.[1] It deals with the associations of human beings that form political units, with the organization of their governments, and with the activities of these

[1] H. G. James, "The Meaning and Scope of Political Science," in *Southwestern Political Science Review*, June, 1920.

governments in making and administering law and in carrying on interstate relations. It deals with those relations among human beings which come under state regulation, with the relation of individuals or groups to the state itself, and with the relation of states to other states. It considers the problem of adjusting political authority to individual liberty. The topics in which it is mainly interested are state, government, and law. Political science is concerned not only with political institutions but also with political ideas. These include the theories of the state which are created by political philosophers and the general political principles which form the political thought of the mass of the people. Political theories and ideals exerted a powerful influence on state development, especially after man began consciously to direct and modify what was at first largely unconscious growth. In the present world political ideas are especially important because of the conflict of ideologies between those states with a democratic background, such as the United States, the British Commonwealth, and western Europe, and those states with a long history of autocratic rule, such as Russia and many nations in eastern Europe. Wide differences in the theory of the relation of the state to the economic system also exist between states and between parties within states.

In its historical aspect, political science deals with the origin of the state, and with the development of political institutions and theories in the past. It interprets movements and tendencies in a process of change and evolution. In dealing with the present it attempts to describe, compare, and classify existing political institutions and ideas. Political science also looks to the future, to the state as it should be, with the aim of improving political organization and activities in the light of changing conditions and changing ethical standards. It is thus a study of the state in the past, present, and future; of political organization and political function; of political institutions and political theories. From this material it attempts to explain the nature of the state and to deduce the laws of its growth and development as well as to suggest needed reforms in political institutions and activities in a world that is undergoing rapid change.

Political Science as a Science. It has been asserted that political science is not a science, in the exact sense of the term, because of the magnitude and complexity of its material, because of the difficulty of applying rigorous scientific methods of investigation and experiment, because there is no consensus of opinion among experts as to its methods, principles, and conclusions, and because it is unable to predict political developments in the future. It is true that political science cannot be an exact science, since its laws and conclusions cannot be expressed in precise terms and since it cannot predict political events accurately. Besides, social and political relations are constantly changing, and what may be true of them today may not be true in the future.[1]

If, however, a science be described as a mass of knowledge concerning a particular subject, acquired by systematic observation, experience, and study, and analyzed and classified into a unified whole, then political science may justly claim to be a science. General laws can be deduced from a systematic study of its material, and the conclusions drawn from the study of political principles are applicable to the solution of political problems. It is often difficult to apply scientific principles in practice. Statesmen are compelled to compromise, patch up, and deal with small separate interests, rather than to take a large, scientific view of government, because of the influence of past or existing conditions, and because of public ignorance or selfishness.

The *science* of politics, which seeks an accurate description and classification of political institutions, and a precise determination of the forces which create and control them, may be distinguished from the art of politics and the philosophy of politics. The *art* of politics has for its aim the determination of the principles or rules of conduct which it is necessary to observe if political institutions are to be operated efficiently. The *philosophy* of politics, or political theory, deals with generalizations rather than with particulars; it seeks to determine essential and fundamental abstractions. Juristic political philosophy aims to determine the nature of the state as the

[1] E. D. Ellis, "Political Science at the Crossroads," in *American Political Science Review*, November, 1927.

creator and enforcer of law. Ethical political philosophy seeks to ascertain the nature and sphere of authority of the state in the light of the purposes for which the state exists. It defines the state in terms of its ends, and judges its organization and activities in accordance with the degree to which they fulfill these ends.

Methods of Political Science. The investigator of political phenomena must work without the assistance of mechanical apparatus; he cannot reproduce at will the political facts under investigation ; his phenomena do not react at regular intervals ; and his material is influenced by the unpredictable actions of individuals and groups. He must also avoid *a priori* arguments and abstract and dogmatic doctrines based on deductive reasoning. Among the methods of investigation, or of viewing the state, that may be used to advantage are the following :

The method of observation studies the world of political life at first hand and attempts to discover the facts of governmental organization and activities by direct contact with those actively engaged in the work or by statistical studies. The observer must be critical of his sources of information, avoid superficial analogies or generalizations, and examine the relation of one fact to other facts.

The method of experimentation may be used to a limited extent, since governments are constantly changing the course of state life. Every new law, institution, or policy is a conscious or unconscious experiment. Observation of the results of the changes may suggest further modifications ; successful efforts may be imitated elsewhere and unsuccessful ones may be avoided.

The statistical method assembles political data that can be counted or measured, and from it draws conclusions, examines trends, and serves as a basis for governmental policy. It is especially valuable in studies of population growth and movement, of voting and public opinion, and of economic conditions, such as labor, agricultural and industrial production, foreign trade, taxation and finance. Statistical studies are a necessary basis for administration and for political and social reform.

The biological method draws an analogy between the state and a living organism, describes the structure and analyzes the

functions of the state in terms of human anatomy and physiology, and interprets the development of the state according to the theory of evolution. It results in interesting analogies, but must be used with great caution, since the laws of growth and change which govern living organisms are not applicable to the state.

The psychological method attempts to explain political phenomena through psychological laws, especially by studying the motives of human behavior, the action of minds in groups and associations, and the methods of influencing public opinion. It helps to explain the issues upon which political parties are based and from which international controversies arise.

The juridical, or legalistic, method regards the state as a legal person or corporation, existing for the creation and enforcement of law. It views political society as a collection of legal rights and obligations, and analyzes the public law relations of the state, but ignores many other extra-legal and social forces that underlie the constitution and laws of the state and that influence human relations.

The historical method makes inductive generalizations from the study of historical facts. It attempts to explain what political institutions are and are tending to be in the knowledge of what they have been and of the way in which they have developed. In using this method one must take care in the selection and analysis of material and in the avoidance of bias and prejudice. The facts collected must be accurate and the reasoning based on these facts must be clear and logical.

The comparative method, which is closely related to the historical method, attempts to discover general laws and conclusions from the study of past, or existing states, by a process of selection, comparison, and elimination. In the effort to sift out common causes and consequences care must be taken to avoid superficial resemblances, to assemble all the pertinent elements in the problem under consideration, and to make proper allowance for diversity of conditions and circumstances.

The philosophical method assumes an abstract ideal and draws deductions from it concerning the nature, functions, and aims of the state. It then attempts to harmonize its theories with the actual facts of history and of political life,

modifying its theories as necessary. The danger of this method lies in depending upon mere abstractions which have no relation to practical facts. If supplemented by sound observation and by critical historical and comparative study it has value.

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CHAPTER II

THE RELATION OF POLITICAL SCIENCE TO OTHER SCIENCES

OUTLINE

The Field of Knowledge. The field of human knowledge may be divided into the natural sciences, which deal with the world of nature or the physical environment in which men live, and the humanistic sciences, which deal with human beings and their organizations and activities. The former includes such sciences as astronomy, chemistry, physics, geology, geography, zoölogy, and botany. The latter includes such studies as history, sociology, anthropology, political science, economics, philosophy, psychology, and ethics. Political science is thus a humanistic science, and more specifically a social science, since it deals with human beings in association and not as individuals. Many problems are the common concern of all the social sciences, each approaching them from its own point of view.

Political Science and the Natural Sciences. In its relation to the natural sciences political science is connected most closely with zoölogy and geography. Man is an animal, and the study of human anatomy, physiology, and hygiene may be viewed as a sub-division of the general science of zoölogy. Such subjects as race, birth and death rates, and eugenics are examples of the topics that lie in the border zone of political

science and zoölogy. The biological theory of evolution influenced political thought in many ways, especially in connection with the idea of the state as an organism and with disputes concerning the value of competition and war. Besides, men are influenced by the world of nature in which they live, especially by the configuration of land and water areas, by climate, and by natural resources.[1] These affect the form of the state and the nature of its activities. Here the connection between political science and geography is evident. The state includes a population and a definite area ; hence political science must deal with the human beings that compose the state and with the physical features of its territory.

Political Science and Sociology. Man is a social being, and his various social activities may be studied separately or may be viewed as a whole. Sociology is a general social science ; it deals with the social aggregate and attempts to discover the facts and laws of social life as a whole. Social relations may vary from commercial and religious interests, almost world-wide in scope, to the single family or the narrowest fraternal group; and such organizations are, in many cases, little concerned with state boundaries. Political science is a specialized social science, dealing with the political life of man, which is one part of his total social life. Its unit of study is the state ; it is interested in a particular portion of society viewed as an organized political unit.

Political science is thus a narrower and more specialized study than sociology, and is, in a sense, one of its differentiations. Political science contributes to sociology facts concerning the organization and activities of the state as a part of the general social structure ; sociology contributes to political science information concerning the origin of political institutions and authority and knowledge of the laws of social control. Political science assumes that man is a political animal ; sociology attempts to explain how and why he became one, and how his political life is affected by his membership in other forms of association. Many of the changes that have taken place in political ideas in recent years have been along the lines marked out by sociology, especially in the theory of law.

[1] See below, Chap. IV.

Political Science and Anthropology. Anthropology, which deals with the physical character of man, his historical and geographic distribution, his racial divisions, his environmental and social relations, and his cultural development, contributes valuable material to the study of political science. Its investigation of the ideas, customs, and organizations of primitive man has thrown light upon the origin of the state and the way in which political ideas and institutions have developed. Its study of racial divisions and their relations to their environment is a valuable antidote to theories of racial superiority which have been prominent in recent political thought. Like sociology, it emphasizes the complexity of human life and the many influences that must be given consideration in political affairs.

Political Science and History. History is a record of past events and movements, their causes and interrelations. It includes a survey of conditions and developments in economic, religious, intellectual, and social affairs, as well as a study of states, their growth and organizations, and their relations with one another. While the political scientist is often inclined to view history as mere raw material for his purposes, and the historian tends to view political science as an emanation from history, the two studies are in fact contributory and complementary. Political science is not concerned with the narrative aspect of history, nor with the mere accumulation of concrete instances, nor with the non-political aspects of history, except as these influence the nature of the state. Political institutions, however, can be understood only through a consideration of their historical setting, the way in which they developed, and the extent to which they have fulfilled the purposes of their existence.

From the data of history, therefore, the political scientist selects and coördinates facts with a view to their special significance in explaining the nature of the state and in building up general causes and permanent principles of political science. These data furnish material for induction and comparison. History gives thus "the third dimension of political science";[1] or, as Professor Seeley puts it, political science is the

[1] W. W. Willoughby, *The Nature of the State*, p. 5.

fruit of history, and history is the root of political science.[1] The material of political science is not, however, drawn entirely from history. The study of the state has also a psychological, ethical, and philosophical background. Political science is concerned with the state as it ought to be, whereas history deals with what has been. The record of past states, with their successes and failures, throws light upon the vexed questions of the best form of government under given conditions and of the proper functions of governmental activity.

Political Science and Economics. Originally economics, or as it was then called, political economy, was viewed as a subdivision of the general science of the state. It was interested chiefly in the methods by which the state could be made rich and powerful and could be provided with an ample revenue. At present, economics has widened its field to include all the individual and social activities that are involved in the production, distribution, and consumption of wealth. With some of these political science is but slightly concerned ; in others the interrelation of political science and economics is obvious. The laws of the state devote considerable attention to questions of property, contracts, and corporations ; in the international relations of states commerce and finance are important factors.

A considerable part of economics deals with the activities of the state in regard to wealth. Such subjects as taxation, currency, and governmental industries form a field common to both sciences, economics viewing them as certain forms of man's total activity with regard to wealth, and political science viewing them as certain functions of governmental administration. In addition, economic conditions materially affect the organization, development, and activities of the state ; and the state, in turn, by its laws, frequently modifies economic conditions. The rise of feudal government on a basis fundamentally economic is a good example of the former ; and even a casual acquaintance with modern conditions shows the close connection existing between business and politics. The way in which the state may influence economic conditions is illustrated by corporation legislation, tariff laws, and labor regulations. All economic activities

[1] J. R. Seeley, *Introduction to Political Science*, p. 4.

within the state are carried on under conditions laid down by the laws of the state, and the prevailing theories of governmental functions profoundly affect the economic life of the country.

The theory of state socialism is a combination of political and economic doctrines, and many of the most important problems of present-day government deal with economic conditions and with the extent to which they should be controlled by state action. Guild socialism and communism[1] are concerned primarily with economic problems, but they also favor drastic changes in political organization and activities. Since the Industrial Revolution, the relation of politics to economics has been especially close. Mercantilist theories of state control, individualistic theories of *laissez faire*, and recent theories of governmental regulation or of state-controlled and state-planned economy represent the cycles of change in modern history. The extensive nationalization of industry in Great Britain and the establishment of a communist state in Russia are obvious examples of the close relation between present-day politics and economics.

Political Science and Psychology. Modern writers on political science show a marked tendency to explain political phenomena by means of psychological laws. As states become democratic and are influenced by public opinion, the methods of influencing public opinion by means of various types of propaganda receive attention. The emphasis which modern psychology places upon instincts and emotion rather than reason and the study of the psychology of groups and associations both have important political effects. The spirit of nationalism is largely influenced by sentiment and emotion, by religious beliefs, and by historical tradition. Political interests and political parties are to a great extent psychological in nature, and the traditions and ideals of a people are potent forces in political life. Governments and laws, in order to work successfully, must be adapted to the mental ideas and moral sentiments of those whom they govern. Peoples differ in their political capacity, and the form of government or the degree of liberty that is suited to one group may be ruinous to another. The

[1] See below, Chap. XXII.

methods of psychology are used by modern governments for many purposes, especially in the army, in civil-service tests, and in the courts of justice. James Bryce, in his study of modern democracies, said, "Politics has its roots in psychology, the study of the mental habits and vocational proclivities of mankind."[1]

Political Science and Ethics. Ethics, the science that deals with conduct in so far as conduct is considered right or wrong, also has points of contact with political science. The origin of moral ideas is closely connected with the origin of the state. Both arose in that early group life when custom was law and when moral and political ideas were not differentiated. With the development of civilization and the conflict between private and group interests, custom gave way to individual morality on the one hand, and to law, or political morality, on the other. Right and wrong, with social sanction, were distinguished from rights and obligations, with political sanction. Yet the relation between morals and law is still close. Moral ideas, when they become widespread and powerful, tend inevitably to be crystallized into law. On the other hand, laws may modify moral standards, but if they attempt to force moral ideas in advance of their time they usually fail in enforcement. Moral standards fix the ideals toward which man is working, and it is from the ethical standpoint alone that the state is ultimately justified. The proper form and functions of government must be determined in the last analysis on the basis of the ethical compromise that secures the greatest good to the individual and at the same time promotes the greatest common welfare.

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[1] *Modern Democracies*, Vol. I. p. 15.

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PART II . THE NATURE OF THE STATE

CHAPTER III

ANALYSIS OF THE STATE

OUTLINE

Need for Analysis. Since political science is the science of the state, a clear understanding of what is meant by the term "state" is important. From the beginning of social life mankind has lived under some form of authority. This authority has varied in its nature and has exercised its functions through different forms of organization. Beneath these differences in the concrete manifestations of political life may be observed a practical identity of purpose ; and by disregarding nonessential elements and modifications that arise because of the demands of time, place, and circumstance, we may discover the very essence of the state and the characteristics that distinguish it from other organizations. In this way the nature of the state in the abstract, the phenomenon with which political theory deals, may be considered apart from the various concrete states that have existed from time to time, consideration of which belongs to the field of historical and descriptive political science.

Essential Elements of the State. An analysis of the state shows its essential factors to be as follows : (1) population, that

is, a considerable group of human beings ; (2) territory, that is, a definite area of the earth's surface upon which the population permanently resides; (3) gevernment, that is, a political organization through which the will or law of the state is expressed and administered ; (4) sovereignty, that is, the supremacy of the state over all individuals and associations within it and the independence of the state from external control. The absence of any one of these elements destroys the state ; all must exist in combination. The state is not the people, nor the land, nor the government, but all of them ; and in addition the state must possess that unity which makes it a distinct and independent political entity. A state, therefore, may be defined as a community of persons, permanently occupying a definite territory, legally independent of external control, and possessing an organized government which creates and administers law over all persons and groups within its jurisdiction. Abstractly considered, the state is a judicial entity or person ; concretely considered, it is the community, the territory which it occupies, and the governmental organization through which it wills and acts.

Population of the State. The territory must be inhabited in order to form a state is self-evident. An uninhabited portion of the earth, taken in itself, cannot form a state. The population of a state may be viewed as citizens, that is, as members of the state, entitled to the privileges that result from membership therein, and as subjects, that is, as the persons over whom the authority of the state is exercised and to whom its commands are addressed. While citizenship is necessary for full membership in the state, there may also be found residing in the territory of a state persons who are not citizens but who receive the protection of the state and enjoy its benefits. An alien is a person who is not a citizen of the state in whose territory he is living or through which he is traveling. A national is a person who is entitled to the protection of the state. The Filipinos, for example, were nationals of the United States. although they were not citizens of the United States. Usually citizenship is required for the exercise of political privileges and sometimes even for the full possession of civil rights.

No definite limit can be fixed for the number of

persons necessary to form a state. The population should be sufficiently numerous to maintain a state organization and to distinguish between public and private affairs, between those who govern and those who are governed ; and it should not be greater than the territorial area and resources of the state are capable of supporting. Aristotle laid down the principle that the population should be large enough to be self-sufficing and small enough to be well governed. Early writers on the state believed that small numbers were essential to good government ; but modern devices of government, such as representation, local self-government, and federation, and modern improvements in transportation and communication have made possible successful government of large populations. In the modern world the population of states varies from a few thousands to many millions.

Territory of the State. Although history shows nomadic peoples, in the hunting and fishing or pastoral stages of development, living under a tribal form of organization in which the idea of definite and permanent territory played little part, it is doubtful whether the term "state" is properly applied to such a condition. Such peoples may have rulers and may be subject to discipline and law. They are often a state in the making. The origin of the state was the result of a gradual evolution,[1] and the exact point at which an earlier social form changed into a distinct political form is difficult to fix. However, the occupation of permanent abodes and the idea of authority over a definite area were powerful factors in the rise of political organization. The state, as the etymology of the word shows, is associated with a fixed place. At any rate, the possession of territory is a necessary basis for all modern states, and the idea of territorial sovereignty and jurisdiction in firmly embedded in present political thought.

Ideas regarding the area over which a state should extend have varied widely. To the Greeks the narrow boundaries of a compact city seemed the proper limit ; to the Romans the whole world was not too large for their concept of the state ; while modern states have placed a certain amount of emphasis upon natural boundaries and geographic units. Many writers

[1] See below, Chap. VI.

have argued that small states are proportionately stronger than large ones, that there is a limit to the area that can be governed advantageously from a common center, and that people have little affection for a government distantly removed. As late as the formation of the United States it was urged that large states could not be well governed, and that democracy was possible only in small states.

On the other hand, writers have emphasized the economic and military advantages of large states, and have pointed out the moral and cultural value of the wide outlook and the national pride that result from membership in a large and powerful state. Besides, the existence of many small states complicates international relations and increases the difficulty of maintaining peace. Some form of world unification seems essential to the establishment of world law. At the same time, many of the greatest contributions to human progress and civilization, especially intellectual and artistic contributions, have come from small states. And experiments in social and political reform are furthered by the existence of numerous and varied political types. If the dangers of war and economic rivalry could be removed, there might be distinct advantages in the existence of small states.

The territory of a state includes land, water, and air. The jurisdiction of a state extends over the land within its boundaries, and over rivers or lakes in its territory. It extends over a marginal strip of the ocean, usually fixed at a width of three miles from the shore. In practice, many states extend their maritime jurisdiction somewhat beyond this limit, and there is a growing sentiment in favor of such extension. The remainder of the high seas is international territory, belonging to no state, but open to the use of all. The rights of a state over the air above its territory have become of importance in recent years because of the development of aviation and the radio. While efforts have been made to extend international control over the air, it is generally held that each state has full sovereign rights over the air space above its territory and its territorial waters. It may therefore, if it desires, prohibit or limit the use of its air space for international aërial navigation.

The territory of a state may be compact, as in the case of

Switzerland, or it may be geographically divided and disconnected. as in the case of the British Empire. Anomalous situations existed in the division of the German state into two parts by the Polish Corridor and in the survival of a few "enclaves," or states entirely surrounded by the territory of another state. The little republic of San Marino, which is entirely surrounded by the territory of Italy, is an example. States have sometimes put forward claims to the right of natural frontiers or strategic boundaries, such as mountains or rivers, and of access to the sea. Although not recognized as rights, such claims have been given consideration by peace conferences in redrawing the boundaries of states. At the close of the First World War, Italy was given Austrian territory in order to strengthen her strategic boundaries, and several of the newly created European states were given access to the high seas by the transfer to them of territory taken from neighbouring states.

The factors that determine the division of the earth into states are numerous. Common descent, religion, geographic barriers, economic interests, nationality, military and naval strength, and many other matters have been important, the particular states that exist at any given time being resultants of these forces. Some of the factors are permanent, though their nature and relative importance many change. Thus the geographic configuration of the earth has always been a factor in state-making, but the achievements of man in overcoming natural obstacles and in devising means of rapid transportation have modified its importance. On the other hand, certain factors, once important, have disappeared or become of little influence. States are no longer combined by the dynastic intermarriage of royal houses, nor is a common religion generally considered essential today to the existence of a state. The areas of common economic interests differ in different periods of history, depending upon the stage of economic development. Traditions of the past sometimes account for states that otherwise have little reason for existence. In some parts of the earth the various factors that create states coincide and furnish a logical basis for state existence ; in other parts of the earth they are so confused that no satisfactory political boundaries can be drawn. Any attempt today to draw a political map of the earth as it

should be meets insuperable difficulties, because of the complexity of forces to be considered, and because of the failure of these forces to coincide in given areas. The reasons for the existence of the states that make up the present political world would open up many interesting aspects of political science.

Government of the State. Given a population inhabiting a definite territory, the next requisite for statehood is some method by which authority may be exercised over these individuals. Some organization must exist by means of which the state may express and administer its will. Government is the organization or machinery of the state. Without a government the population would be an incoherent, anarchic mob with no means of collective action. All the members of the political community constitute the state; a much smaller number, though in modern states a fair proportion, comprise the government. It includes all those persons who are occupied in expressing or administering the will of the state—the sum total of all the legislative, executive, and judicial bodies in the central, local and colonial organs. Moreover, the terms "executive," "legislative," and "judicial" must not be interpreted in a narraw sense. When the electorate, through the suffrage, chooses governing officials, it is exercising the executive power of appointment ; by means of the initiative and referendum it shares in legislation ; and by jury service it becomes part of the judiciary. Similarly, the term "executive" must be broadened to include that extensive and important group of officials known as the administration, which, with its own system of law and courts, has become in some states practically a separate department of government. The members of the military, naval, and police forces of the state are a part of the administration. Finally, some states have established organs exercising the specific function of making or amending their constitutions. These also form parts of the government.

In its broader sense, then, the government may be defined as the sum total of those organizations that exercise or may exercise the sovereign powers of the state. Just as each state is a unit, so the government of each state is a unit, although separated for convenience into various departments and divisions. A state cannot exist without a government, and government

exists only as the organization of a state. While the term "state" is an abstract term and may be conceived apart from the existence of any actual state, since all states are alike in essence, "government" is distinctly a concrete term, and its forms vary, being determined in each case by the political conditions that obtain in each state. Government is thus the existing adjustment between the state and its individuals, and the means by which interstate relations are maintained—the machinery through which the purposes of the state are formulated and executed and the common interests are regulated and promoted.

Sovereignty of the State. A people inhabiting a definite territory and organized under a government does not necessarily form a state. A state must possess unity as well as organization. By unity is meant the fact that the territory of and population constituting a state cannot be subject to any wider political organization, and that a state cannot include any territory or population that is not subject to it politically. Thus the so-called "states" of the United States are not states from the standpoint of political science, since they form parts of the wider political unit, the United States, which itself is one state. On the other hand, Europe, though a unit geographically, is not a state, because it includes a number of separate political organizations, each of which is a state. Unity involves the idea of external independence and internal oneness ; and a population possessing unity in this sense, if it occupies a definite territory and is organized by means of a government, invariably constitutes a state.

If then, population, territory, government, and political unity are the essential elements of a state, a further analysis may be made. Leaving out of consideration population and territory as the physical elements or raw materials of which a state is composed, and combining government and unity, we find the real essence of the state to be sovereignty. Viewed internally, this means that a state has complete legal authority over all the individuals and groups that compose it ; viewed externally, it means that a state is legally independent of the control of any other state. Since a state possesses unity, no member of the state is exempt from its authority, and no

power outside the state can exert control over it. Since a state possesses organization, it has a government by means of which it enforces authority over its individuals and maintains its independence of other states. Sovereignty,[1] that is, internal supremacy and external independence, is the distinctive characteristic that distinguishes the state from all other forms of human association. The sovereign will of the state, when expressed and enforced by means of its government, is called law.

Since the state is internally sovereign, its jurisdiction extends over all persons in its territory except those over whom it has waived authority in accordance with the generally accepted rules of international law, or in accordance with special treaty concessions. Internal sovereignty implies that there can be but one state organization upon the same territory over the same people. For purposes of convenience the state may divide the powers of government between central and local bodies exercising authority in the same territory, but all such bodies are exercising the indivisible sovereignty of a single state. Moreover, states may change completely their form of government, legally or by revolution, without destroying the state or its sovereignty. Only by continued anarchy, by absorption into another state, or by subdivision into several states can the permanent life and sovereignty of a state be destroyed.

The external sovereignty or independence of the state implies that it is free from the control of any other state. This aspect of sovereignty is less absolute than its internal phase. The rules of international law and the treaty agreements of states place practical limitations on the complete independence of all states. A certain degree of control, especially in respect to foreign affairs, may be exercised by one or more states over another without destroying the statehood of the latter. Protected states, such as Cuba, and neutralized states, such as Switzerland, are considered sovereign states, in spite of external limitations upon their powers in international relations. The self-governing dominions of the British Commonwealth may be considered as states in spite of the nominal control which Great Britain exerts over them in

[1] For a more extended discussion of sovereignty, see Chap. IX.

certain respects. The exact degree of external independence necessary for statehood is difficult to define. If, however, a state is a recognized member of the family of nations, it is considered the legal equal of all other states, in the sense that all are entitled to equal status and protection under international law. This does not mean that states are equal in size, population, wealth, power, or degree of civilization, nor that all states are entitled to an equal voice in determining international questions or to equal representation in international organizations. The supremacy of the great powers is more important in fact than the theory of legal equality.

The State in Constitutional and International Law. Some difference of opinion concerning the nature of the state exists between writers on constitutional law and writers on international law. The former are interested in the internal sovereignty of the state and in its relations to the individuals that compose it ; the latter are interested in the external sovereignty of the state and in its relations to other states. In the actual political world there are forms that are difficult to classify. Some states apparently possess a limited internal sovereignty ; others possess a partial external independence. Members of federal unions, protectorates, states under mandates, vassal states under the suzerainty of other states, and autonomous dependencies, such as the British self-governing dominions, are viewed as states by some writers, although they do not possess complete external sovereignty. Nor are they fully recognized as states in international law, though some of them may have definite international status and powers. Some of these are tending to lose the traces of sovereign powers that they possess ; others may be developing into full-fledged sovereign states.

Besides, there are petty states, such as San Marino and Monaco, that seem to possess complete internal sovereignty, and yet are not recognized as full international persons. In international law a state must possess the power to fulfill the international obligations which are required of all members of the family of nations. In addition, international law requires a certain type and degree of civilization before it will admit a state into the international community. Turkey was not

recognized as a state in the international sense until the middle of the nineteenth century, and China and Japan came still later into the family of nations. All these countries possessed the requirements of a state from the internal point of view long before they were recognized as states internationally. For some years after the 1917 revolution Russia was somewhat outside the international circle, because of the refusal of her government to recognize certain previous international obligations, although there was no question that Russia was a state from the point of view of internal sovereignty.

Much of this confusion results from the fact that sovereignty is viewed as having an internal and an external aspect. In reality, internal sovereignty and external sovereignty are two quite distinct, though closely related, concepts. Internal sovereignty is the legal supremacy of the state over all persons and associations within it. External sovereignty is the independence of the state from interference by other states. If the term "sovereignty" were limited to the former meaning, and the term "independence" were used for the latter, clarity of thinking would be furthered. The one does not always coincide with the other. Internal sovereignty is legally absolute, while external sovereignty is always relative and often decidedly limited.

The State as People or as Territory. While population and territory are both essential to the state, in the modern sense, a certain confusion has resulted, especially in the past, from viewing the state primarily as a group of people or primarily as an area of territory. In the first case, the sovereignty of the state would be personal. Its jurisdiction would extend over its members wherever they were, and they would carry their law with them wherever they went. The rulers of the state would be lords of their people. In the latter case, the sovereignty of the state would be territorial. Its jurisdiction would extend to all persons on its territory, whether members of the state or not, and it would apply to all of them its own law. The rulers of the state would be lords of their land. In the modern world, the theory of territorial sovereignty is generally applied. Traces of the other principle appear, however, in the freedom from territorial jurisdiction possessed

by ambassadors and by foreign sovereigns or foreign public vessels temporarily in the territory of anther state. Likewise, the principle of personal sovereignty is applied in the extra-territorial jurisdiction of the great powers over their citizens in certain Oriental countries, and in the practice of certain European countries of punishing their citizens for crimes committed outside the territorial limits of the state. The method of acquiring citizenship at the time of birth shows a similar confusion. According to the principle of personal sovereignty, children born to the citizens of a state become its citizens regardless of the place of birth ; according to the principle of territorial sovereignty, children born in the territory of a state become its citizens, regardless of the citizenship of their parents. Both principles are applied in the modern political world, with resultant contradictions and controversies.

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CHAPTER IV

THE PHYSICAL BASIS OF THE STATE

OUTLINE

Importance of the Physical Basis
1. Natural environment
2. Population

Elements of the Physical Environment
1. Contour of the earth's surface
2. Climate
3. Natural resources

Contour of the Earth's Surface
1. Size of the state
2. Isolation of the state
3. Direction of external activity

Climate

Natural Resources
1. Mineral resources
2. Vegetable resources
3. Animal resources

General Aspects of Nature

Changes in Environment

Geopolitics

Importance of the Physical Basis. In the last analysis, all phenomena are manifestations of physical energy, and the activities of the state are no exception. Given the individuals that compose the state, the various combinations of these individuals, the natural environment in which they exist, and the interrelations among these, natural science will explain the state in its own terms. Without encroaching upon this field, political science may at least view the raw materials of which the state is composed and their influence on state formation and development. The analysis of the essential factors of the state has already indicated its physical basis. Territory and population, or, stated more broadly, nature and man, are the

foundations of the state as they are of all social organizations. A brief survey of the influence that physical environment exerts on state life will form a valuable introduction to the later discussion of the origin and development of the state, and to those activities whose manifestations are less obviously physical. Questions such as Why did the state arise? Why at such a place or time? Why were its limits as to boundaries and people thus? Why its peculiar organization? Why its particular course of development and decline? cannot be answered unless those conditions whose causes are ultimately found in the physical environment are understood.

It must further be remembered that while, for convenience, the physical basis of the state is subdivided into (1) the natural environment and (2) the population, the connection between these two is very close. Man himself is a part of nature; and his origin, development, and distribution are powerfully influenced by his surroundings. Every state consists ultimately of a number of individuals, each having certain physical and mental characteristics, existing in certain relations with one another, and the whole existing in a certain natural environment. The environment is constantly modifying the life of both individual and group; these, in turn, are constantly modifying their environment; and the relations of individuals to one another modify both the individual and the group. It is obviously impossible to discuss adequately within the scope of a single chapter the importance of these elementary factors of state development, but a few facts and illustrations may serve to indicate the enormous influence that physical conditions exert.

Elements of the Physical Environment. The natural environment includes the sum total of all those influences of the external world that affect the life of the individual or of the social group. Its main subdivisions are (1) the contour of the earth's surface, (2) climate, and (3) natural resources. These form the background of all human existence and constantly affect all human institutions. In the early life of mankind dependence on natural conditions was almost complete. Growth of intelligence brought man into contact with nature at an increasing number of points, and at the

same time extended his control over nature until he became to some extent the master rather than the slaves of his environment. Even the wonderful advances of modern science, however, are but feeble beginnings of man's control of the physical environment, and the most advanced modern state is powerfully affected by natural conditions with which the skill of man is still unable to cope. A few illustrations under each of the heads named above will indicate their importance in past and present political existence.

Contour of the Earth's Surface. The contour of the earth's surface includes the arrangement of land and water areas, the size and position of mountains, lakes, and rivers, the extent and altitude of land divisions. It gives, in short, an earth divided by nature into a number of land units of various sizes, shapes and internal formations, separated from one another by barriers formed by mountains, deserts, and broad water areas, or joined by river systems and valleys. Sometimes these geographic units are distinct, with natural boundaries on all sides, as in the cases of Italy, Spain, and the British Isles, although these differ as to internal unity. Sometimes the natural boundaries are indistinct or broken in places, as in the cases of the Balkan area and the great plain of northern Europe. Such physical conditions influence state existence in several ways.

1. *The size of the State.* Other things being equal, the areas of states tend to coincide with geographic units. Natural barriers protect the people living within them from contact with other peoples, and develop within them those common interests and that consciousness of unity which lie at the basis of a state. It was no accident that great empires grew up in the Nile and Euphrates valleys ; that the Russian plain and the Chinese river valleys are the seats of extended states at the present day. A vast extent of unbroken area encourages the formation of a state with great territorial expanse. On the contrary, nature formed Greece and Switzerland to be the homes of small distinct units, and Europe as a whole is adapted to a number of states of comparatively small size. The political map of Europe corresponds closely to its natural geographic units, and all attempts to unify western Europe have failed, in spite of the genius of Charlemagne and Napoleon.

The efforts of man may, of course, modify the influence which the contour of the earth's surface would otherwise exert on the area of states. The maintenance for several centuries of Roman legions along the Rhine frontier served the same purpose as an impenetrable mountain barrier, and helps to explain the present separation between France and Germany. On the other hand, the engineering skill of man, the development of transportation and communication, and improvements in the methods of government enable modern states to include several geographic unities, as the expansion of the United States bears witness. Even in early times the military genius and governing ability of the Romans enabled them to establish a great empire regardless of geographic obstacles. The mere question of size exercises considerable influence on state development. It was the expansion of Rome that checked her democratic tendencies and caused a reaction toward the centralized despotism of the Empire ; and it is the territorial growth of modern democracies that has necessitated the present highly developed forms of representative government and federation.

2. *The isolation of the state.* The configuration of the earth determines in large degree whether a state shall develop apart from external influences, or whether it shall constantly have peaceful or hostile relations with other states. The Rhine boundary, the weak spot in the frontiers of France and Germany, has been the bone of contention between them, and the battlefield of Europe. Greece, with her excellent harbors and her coast fringed with islands, was naturally led to intercourse, commerce, and colonization. Spain and England, both cut off by natural boundaries from neighboring states, worked out their political institutions with little interference ; and each developed commerce, a navy, and a colonial empire. States such as Russia, France, and Germany, with powerful neighbors across weak frontiers, naturally maintain large armies. States such as England, Japan, and the United States, protected by the sea from powerful neighbors, depend primarily upon naval protection.

What a state gains in the way of protection by a natural frontier is partly offset by the danger of provincialism and internal stagnation, and, in case of water boundaries, by the

dependence upon naval strength to maintain external relations. The wall that keeps others out also shuts those behind it in. An isolated state tends to develop a strong but narrow national spirit ; a state with many external contacts becomes more cosmopolitan in its point of view. The fall of Spain was brought about both by her internal narrowness and by the loss of her colonies as a result of naval decline. England, comparatively safe from invasion, must be able to protect her commerce in order to avoid a similar fate. The body of water that separates Ireland from the remainder of the British Isles is largely responsible for the differences of nationality and religion and for the feeling of hostility against England that the Irish retain. The existence of mountains in Wales and Scotland has had somewhat similar effects upon the unity of Great Britain. Customs and laws are affected by isolation. For example, Blackstone states that, in the Isle of Man, to take away a horse or ox was no felony, but a trespass, because of the difficulty in that little territory of concealing them or carrying them off ; but to steal a pig or a fowl, which could easily be consumed, was a capital misdemeanor, and the offender was punished by death.

The arrangement of land and water areas largely determines the commercial importance of a state. When the Nile and Euphrates valleys were the seats of empire, Phœnicia, the middle country, facing the Mediterranean, was the great commercial power. As civilization shifted westward and surrounded the Mediterranean, Greece and Rome in turn held the strategic position. The discovery of the New World and the growing importance of the Atlantic gave Spain, France, Holland, and England advantages of geographic location ; while present conditions, in the opening up of Pacific lands, find the United States facing on both oceans, in an enviable position.

3. *The direction of external activity.* Social as well as physical movements tend to follow lines of least resistance, the arrangement of mountains, rivers, and seas determining in large measure the trend of migration and of conquest. Greece, with her chief mountain system on the west, and with good harbors and numerous islands on the east, naturally came first into contact with the old and powerful Oriental peoples.

Rome, facing in the opposite direction, had early relations with Carthage and with the Gauls and other barbarians to the west; while not until late in her development did she come into contact with Greece, with whom she stood, as it were, back to back. As a result, Greece, compelled at first to wage defensive wars against powerful invaders, was thrown back upon herself and developed an internal life of remarkable energy; Rome, thrown into relations with inferior peoples, naturally began her career of external conquest that resulted in world-wide dominion and an imperial form of government.

River valleys have always formed the easiest means of access to new lands; and mountains, deserts, and the sea, the greatest barriers. The St. Lawrence and Mississippi invited the French traders and missionaries to scattered settlements, while the Appalachian Mountains restricted the English colonists to a narrow strip of coast for over a century. The resultant spirit of unity and of common interests among the English colonists was manifested later. Besides, it was no accident that the final clash between the English and French in America should occur over the possession of the headwaters of the Ohio, one of the natural entrances into the western lands. The early migrations of peoples, the colonization of newly discovered areas, and the immigration of recent times have all followed natural lines of movement. Civilization and culture, as well as war and conquest, expand in the directions where natural barriers least prevent social intercourse. In ancient times physical features determined the trails of savages and the routes of caravans; in modern times the location of cities and the direction and nature of facilities for communication, travel, transportation, and trade have been fundamentally affected by geographic contour.

Climate. Climate, by which we mean especially natural conditions of light, heat, and moisture, affects the individuals that compose the state, rather than the state as a unit. It is, however, difficult to separate its influence from that of fertility of the soil and resultant animal and vegetable resources, which affect the group as well as the individual. In general, it may be said that climatic extremes of any kind interfere with the higher forms of state existence. The dazzling brilliancy of

reflected light from arctic snows or tropical deserts, the long nights of the polar regions, the extreme cold, which checks vigorous growth, the extreme heat, which enervates, the malarial marshes of rainy regions, the parched lands of rainless areas—all these make existence difficult and organized political life possible only in its undeveloped forms. All great states have arisen in areas where a temperate climate is combined with a moderate amount of moisture. While the earliest states emerged in a comparatively warm climate, where the bounty of nature furnished food in abundance and gave leisure for social development, the highest forms of state life arose in those cooler climates that stimulated energy, resulting in continuous progress. A temperate climate also gives contrasted season, with resultant variety of activities which react sharply on one another and make for progress.

In general, a close correspondence obtains between climate and racial temperament, with important consequences in state life. The peoples of the colder temperate zone are energetic, provident, serious, thoughtful rather than emotional, cautious rather than impulsive. The peoples of warm countries are easy-going, improvident, gay, emotional, and imaginative. A cold climate, where the struggle with nature for food is severe and where shelter is essential, gives an autumn tinge to life and has a steadying effect on the human heart and brain. In warmer lands, where nature is generous, national life has the buoyancy and thoughtlessness of childhood, with its charm and its weaknesses. Tropical climate tends to relax the mental and moral fiber, induces indolence, self-indulgence, and various excesses which lower the physical tone of the population. The political stability of northern peoples has often been contrasted with the instability of their southern neighbors.

The ability of a people to adjust itself to a climate different from that in which it originated has important effects on political life. The black race is not adapted to the rigors of life in a cold climate, its death rate increasing markedly as it moves into a winter zone. The white race finds it difficult to live in the tropics ; and as it expands its colonial policy, it is compelled to import a ruling class, constantly renewed, the machine of governmental and economic exploitation being supported by

a servile native population engaged in agriculture, which in the tropics is fatal to the white man. The ability of the Chinese to adapt themselves to a wide climatic range gives them a marked advantage in the political future of the world.

The effect of climate on birth rate and on the age of maturity influences the state indirectly. It has even been asserted that the type of crime in warm countries differs from that in cold countries. In the former, where population is dense, human life cheap, and the contact of man with man consequently great, crime takes the form of offenses against the person—murder, assault, rape ; in colder climates, where sparser population brings man less in touch with his fellows, and where the means of overcoming nature are more important, crime takes chiefly the form of offenses against property. As a result, different ideas of morality, influenced somewhat at least by climate, will prevail ; and these in turn will affect the laws and organization of the state. While it is, of course, easy to push such reasoning to extremes, the truth remains that political existence, as one of the forms of social activity, is modified by every phase of the physical environment in which that activity takes place.

Natural Resources. Natural products which man may apply directly to his wants are powerful factors in state development.

1. *Mineral resources.* In the early stages of civilization mineral resources were so important that the terms "stone age," "bronze age," "iron age," are often used to characterize certain forms of culture. Some writers go so far as to interpret the entire progress of humanity in terms of the metals. From the standpoint of political life, those peoples who used weapons and tools of bronze or iron had enormous advantages over tribes that retained cruder implements of wood or stone ; and the conquests which naturally followed, necessitating closer organization, and some form of rules to determine the relation of conqueror to conquered, were powerful factors in the rise of government and law. Later, when gold and silver had become standards of value, the possession of these metals was eagerly sought. Desire for plunder has been at the basis of many wars that have made or unmade states ; search for gold

underlay much of the early conquest and colonization in the New World ; and the preëminence of Spain in European affairs during the sixteenth century was due, in part, to the power brought her by the wealth of Mexico and Peru. In the modern industrial age deposits of coal and iron are essential ; and those states fortunate enough to possess large quantities of these minerals, easy of access, have enormous advantage. The present importance of oil is a factor in international affairs, owing to the efforts of states to secure for themselves a reserve supply of this mineral fuel for the future.

2. *Vegetable resources.* The earliest states arose where nature furnished food in abundance. There population became comparatively dense and stable, and contact of man with man developed civilization and made political authority necessary. Rice, grains, and the date palm in the Old World, maize and the banana in the New World, formed the basis of existence at a time when man was dependent upon nature for sustenance. The great empires of Egypt, China, Babylon, and India, of Mexico and Peru, grew up in natural granaries. The less fertile soil of Greece compelled her to depend more and more upon commerce for her food supply ; and her chief products, wine and olive oil, commodities of large value in small bulk, thus serving as a means of exchange, facilitated such intercourse. The inability of England to furnish sufficient food for her present population is a fundamental factor in British political life and policy.

Pressure of population on the means of subsistence is at the basis of the migrations of early peoples, of the colonization of new lands as they were discovered, and of the immigration of the present day. The thin soil of New England and the abundance of timber naturally turned her to shipbuilding and trade ; as cotton became "king" in the South, the institution of Negro slavery was firmly fixed. Thus the American Revolution and the Civil War can be partially explained on the basis of vegetation. The struggle for the Spice Islands was the key to much European history in the sixteenth and seventeenth centuries, while more recently the sugar situation in Cuba paved the way for our war with Spain and led indirectly to colonial expansion and imperialism. Coffee is

an important factor in the politics of Brazil, and control of the world's supply of rubber is an element in present world politics.

3. *Animal resources.* The presence of game was an important factor in early development ; and upon whether this game was large and dangerous or small and timid depended the amount of cooperation required, and thus, indirectly, the form of social organization. Where the horse, the cow, and the sheep existed, the transition from the hunting to the pastoral stage of economic development was possible, with resultant changes in social organization ; and this fact serves as at least a partial explanation of the advanced civilizations found at a comparatively early period in Asia and Europe. Domestication of animals marked a long stride toward permanent food supply and stable organization ; and, as it created a form of wealth, it necessitated some kind of property regulation. Absence of animals suitable for domestication and for beasts of burden helps to explain the comparative backwardness of civilization among the American Indians and among the aborigines of Australia. Abundance of fish played an important part in the formation of the Hanseatic League, the rise of the Netherlands, and the development of New England, while the furbearing animals of North America determined the French type of colonization in that region. The part that the horse played in medieval feudalism has seldom been adequately appreciated ; and the development of sheep-raising in England during the sixteenth century hastened the fundamental changes in economic and social life that marked the rise of modern democracy.

General Aspects of Nature. Several writers[1] have pointed out that the type of man and of society is influenced by the general aspects of nature. In some parts of the earth man is surrounded by nature in violent and terrible aspects ; earthquakes, volcanoes, hurricanes, avalanches, great mountains, vast deserts, mighty rivers, form the background of human life. Under these conditions, which appeal to man's imagination rather than to his reason, man fears nature ; he hesitates

[1] H. T. Buckle, *History of Civilization in England*, Vol. I, Chap. II ; H. von Treitschke, *Politik*, Vol. I, Chap. VI.

to investigate and experiment ; he lacks self-reliance ; his religion becomes superstitious ; his art, monstrous ; his organization, despotic. The course of civilization in India and Peru may serve as examples. On the other hand, certain parts of the earth are on a smaller and more quiet scale. No awful phenomena hold man in terror, and the mastery of man over natural forces progress rapidly. In such circumstances moderation, individualism, and reason develop ; art becomes beautiful, religion rational, and the state democratic. Such conditions ancient Greece and modern Europe exhibit. These results came in part from the isolation of the former region and the accessibility of the latter. Mountain areas discourage progress because they are areas of isolation and confinement, remote from the currents of men and ideas that move along the valleys. They are regions of hard labor and little leisure, of poverty, and of cramped minds. In the fertile alluvial plains and river valleys are wealth, leisure, contact with many minds, and urban centers where commodities and ideas are exchanged. Such areas afford the conditions of culture and of progress.

Changes in Environment. While individual and state are thus influenced by the physical environment, the subordination is not complete. The distinguishing feature of man is his ability to modify his environment ; and with the growth of intelligence comes the mastery of man over natural forces, and the creation of more favourable conditions. Bridges and tunnels decrease the importance of natural boundaries ; forestry and irrigation modify the climate. The draining of swamps, as in England or Holland, and the irrigation of arid lands, as in Egypt or the western United States, cannot fail to influence the life of the state there existing. By proper care the quality of the soil may be completely changed ; animals and plants may be made to flourish in parts of the world remote from their original homes ; and by cultivation and breeding the value of species of plants and animals may be wonderfully increased.

Almost all the arts and inventions that mark the progress of civilization are steps towards the increasing use or control of the natural environment. By conquering nature man escapes the constant fear of unknown danger and the uncertainty of

food supply, and attains security and leisure, both of which are necessary for progress. The use of tools and weapons increases man's natural strength and dexterity ; clothing and artificial shelter enable him to withstand climatic changes ; and the use of fire gives him warmth and light, better-prepared food, the means of working minerals, and, finally, artificial power. Building upon the crude guesses of the early alchemist, the modern chemist analyzes the materials of which the earth is composed and recombines them for the convenience of mankind. Even the complex machinery of the present day, which performs intricate processes, is but the logical result of that development, begun ages ago by primitive men, by means of which natural forces are utilized and natural laws applied for human benefit.

The development of transportation is one of the most important means by which man has conquered nature. The growth of commerce and travel, the methods which make possible the transfer of commodities and persons, rapidly and cheaply, from place to place, are breaking down man's dependence upon geographic location ; and the rise and fall of cities and of states are largely determined by the lines of railways, canals, and ocean traffic. Transmission of power, a result of the development of transportation, has far-reaching results. Not only may coal, wood, and oil be used as fuel where conditions are most favourable for human labor, but labor itself may be transported to places where natural conditions are most advantageous. Recent developments in the transmission of electric power tend to reduce the importance of lacation. Finally, the transmission of information further reduces the importance of natural influences. Telegraph, telephone, radio, and the mail service coöperate in binding the earth into a unity and in making knowledge international. While nature still places certain limitations upon the activities of man, the progress of civilization is weakening those limits and making it more possible for man consciously to direct his own development and the forms of his institutions. Certain natural factors which were important in the lives of early states are now of little influence, because man has been able to modify or overcome them. However, other natural factors, such as coal, oil, and

electricity, that were formerly of no effect, have recently become important in political life.

Navigation of the air has been perhaps the most important development of recent years in its political consequences. It has made distance less important and has overcome most of the obstacles of former geographic barriers. Flying at high altitudes and on the shortest routes, which in many cases are across the north-polar regions, airships not only ignore the barrier of climate, but also make important, for strategic reasons, the land areas bordering the north arctic. Air navigation has revolutionized warfare and diminished the importance of sea power. States, such as Great Britain and the United States, formerly safe from attack as long as they had naval protection, no longer enjoy that advantage. The invention of rocket bombs with long range and of the atomic bomb, which can be carried by air over vast distances, not only makes war more destructive, but also makes the configuration of the earth of little importance. What the future effects of these developments will be on the political history of mankind cannot yet be imagined.

Geopolitics. The term *geopolitics* has come into prominence in recent years as a part of the Nazi philosophy of the state in Germany. Geopolitics is political geography applied to national power politics ; in the field of foreign policy it aims at improving the physical setting of the state.

Many earlier writers prepared the way for this concept. Bodin[1] and Montesquieu[2] gave attention to the influence of geography and climate on national states. In England, Henry T. Buckle,[3] and in Germany, Karl Ritter,[4] established the idea that the earth is an organic unity, that man's destiny is conditioned by nature, and that history is geography in action. In the United States, Admiral A. T. Mahan[5] emphasized the importance of sea power. In Germany, Friedrich Ratzel[6] considered the role of frontiers and boundaries, the necessity

[1] *De Republican Libri Sex* (1576).
[2] *Spirit of the Laws* (1748).
[3] *History of Civilization in England* (1857-1861).
[4] *Comparative Geography* (1865).
[5] *Influence of Sea Power upon History* (1890).
[6] *Political Geography* (1923).

of national living-space, and the desirability of territorial expansion. In Sweden, Rudolf Kjellen,[7] who coined the term *geopolitics*, viewed the state as a living organism which must grow by colonization and conquest, thus creating a few giant states. He listed Germany's grievances and drew up a plan for her future conquests. Sir Halford Mackinder,[8] a British geographer, emphasized the strategic value and potential economic and military power of the great "heartland," comprising eastern Europe and western Asia ; and argued that the nation controlling this area could dominate the world. His ideas and those of Kjellen received much attention in Germany.

The doctrines of these writers were combined into a systematic plan for Germany's future policies by General Karl Haushofer,[9] who became the "spatial philosopher" of Hitler's Germany, and who set up an elaborate organization to assemble data which would be valuable for world conquest. He defined *geopolitik* as the scientific foundation of the art of political action in the life-and-death struggle of state organisms for living space. Accordingly, he put stress upon Germany's need for additional territory, upon the importance of natural frontiers and sea outlets, upon the value of a strong national leader, and upon the sudden *Blitzkrieg* and total warfare. He favored a German-Russian alliance and a lightning war on the western European states. He also urged a German-Japanese alliance and emphasized the future importance of the Pacific area. According to his plan, Europe would be controlled by Germany, the Pacific region would be dominated by Japan ; Russia and the United States, which were large enough to be self-sufficient, would be limited to their internal interests. The earth would thus be divided among four great states, with Germany as the dominant world power. The connection between these doctrines and the military policy of Germany and its attempt to expand and to dominate Europe is quite apparent.

[7] *Der Staat als Lebensform* (1924).
[8] *The Geographical Pivot of History* (1904).
[9] *Journal for Geopolitics*, established in 1924

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CHAPTER V

THE POPULATION OF THE STATE

OUTLINE

Importance of Population
1. Size of the population
2. Distribution of the population
3. Type of the population

Growth of Population
Distribution of Population
Race
Nationality
1. Community of race
2. Community of language
3. Community of religion
4. Geographic unity
5. Common political aspirations
6. Community of interests

Importance of the Individual

Importance of Population. The physical environment of itself can accomplish no historical result. It acts always upon or through individuals, determining their characteristics and conditioning their activities. Hence a study of the fundamental elements of the state must include the individuals that comprise it, as well as the natural circumstances in which it exists. The internal influence of heredity must be added to the external influence of environment, and the results of the contact of man with man, as well as of man with nature, must be considered. Just as political science views the earth as divided into a number of geographic units, differing among themselves and tending with more or less definiteness to divide mankind into groups, so political science views mankind as divided into a number of ethnic units, differing in numbers and in racial and national characteristics, and tending more or less powerfully toward that spirit of unity which creates

a state. The influences of natural environment partly explain the origin and development of states ; the influences resulting from characteristics of individuals and groups of individuals complete the explanation. Nature and man in constant interrelation create the state.

Three aspects of population, in particular, are of importance in their effect upon the state, both in its internal organization and activities and in its international relations. These are the following .

1. *The size of the population.* The number of people in a state, the rate of growth of population, and the relation of numbers to area and resources have important political effects.

2. *The distribution of the population.* The distribution of the population includes both the internal distribution, which creates varying densities of population in different parts of a state, and the external distribution, which results in the movement of populations from one state to another.

3. *The type of the population.* The physical and psychological differences that create races and nationalities, the degree of intelligence and political ability, and the stage of economic development are aspects of population that have marked influence upon political organization and status.

Growth of Population. The growth of population in a state, aside from the changes caused by immigration and emigration, is determined by the excess of births over deaths, and therefore is modified by any causes that increase or diminish either birth rate or death rate. Among early peoples the birth rate was high, but a comparatively small increase in population resulted because of the correspondingly high death rate. Disease, famine, war, and at times the deliberate removal of surplus children or useless aged resulted in an enormous waste of life. The growth of civilization has been accompanied by a declining birth rate. For this two important reasons have been offered : (1) the biological fact that the powers of reproduction tend to decrease as animal life becomes more complex and highly organized ; (2) the sociological fact that deliberate prevention increases as civilizations become older and wealthier. Marriages under these conditions are fewer and later, and families smaller. The annual birth

rate in the United States has decreased from 35 per thousand of the population in 1900 to 25 per thousand in 1945.

At the same time, the progress of civilization is accompanied by a declining death rate. Improvements in sanitation and medical science check disease ; a more highly developed economic life prevents famine ; the average age of human life is extended ; and society cares for its weak instead of destroying them. Thus, in spite of a declining birth rate, population may increase rapidly and the waste of human life be avoided.

In the leading modern states the increase of population, owing to an excess of births over deaths, varies considerably. In France birth and death rates are about equal and there has been little increase in population during the past half century. Great Britain, the United States, and Germany have an increase of population of about seven to ten per thousand annually. Italy and Japan have an increase somewhat larger, while the Russian population growth is more than twenty per thousand annually. The average span of human life, especially in the United States, has been considerably lengthened and the proportionate number of elderly persons has grown, with resultant effects on political, social, and economic life, and a growing demand for state aid to this group.

Increasing population was an important factor in the rise and development of the state. In primitive times growing numbers caused increasing contact of man with man, necessitating organization, authority, and laws. Later, pressure on the food supply led to migrations, colonization, and conquests. If external expansion was impossible, a more highly developed economic life had to be created at home, the more populous states improving their agricultural methods or turning increasingly to industry, commerce, and city life. In this case, the necessity of importing food and raw materials and of finding markets for finished goods led to colonial and commercial rivalries, to the exploitation of backward peoples, and to frequent wars. The size of the population is an important element in military strength. From the early Spartans, who bred warriors as one breeds cattle, to modern France, bewailing her stationary population, the question of numbers has been of importance in political affairs.

The theory of those interested in national greatness usually favours a large population. The Hebrews were encouraged by the Biblical injunction to "be fruitful, and multiply, and replenish the earth." The Greeks and Romans regulated marriage and encouraged large families, though the Greeks placed some emphasis on quality. For several centuries after the rise of modern national states, the prevailing mercantilist doctrines, emphasizing national wealth and greatness, encouraged belief in the value of large populations. Rulers of states are usually bitter opponents of race suicide.

On the other hand, social reformers have held theories opposing too rapid growth. Early Christianity, in its reaction against the social and moral conditions in the Roman Empire, made celibacy an ideal and viewed marriage as an inferior state. In the later eighteenth century, poverty and unemployment in western Europe led economic reformers to the view that population tends to increase more rapidly than the means of subsistence, and the doctrines of Malthus[1] and his followers attacked the earlier belief in the desirable results of increased population. At the present time the desire to maintain high standards of living and the eugenic interest in improving the racial stock lead many social reformers to favor birth control.

There are thus opposing tendencies in modern states. A declining birth rate is accompanied by a declining death rate. Militarists and employers of cheap labor desire large populations. Others desire quality rather than numbers, and emphasize the dangerous results in poverty and wars that follow too rapid growth. Undeveloped areas desire increased populations ; congested areas seek for an outlet for their surplus numbers. The proper adjustment of population to the food supply, resources, and economic conditions in a state is a fundamental question in political science.

Distribution of Population. In addition to the growth of population, which results from excess of births over deaths, the distribution of this population over the earth is important to political science. Here again the physical environment is a determining factor. Certain areas, because of their configuration, climate, or resources, are adapted to sustain large popu-

[1] *Essay on Population* (1798).

lations. It is evident that the size of the group will depend not only upon the external environment but also upon the use made of it by man. A given area, capable of supporting but a small group in the hunting or pastoral stage, may maintain a larger number engaged in agriculture, or an infinitely larger number when industry and commerce have developed. In favored localities the excess of births over deaths will usually be greatest, and the size and density of the population will be further increased by peoples attracted thither by the superior advantages which such areas offer. Thus both the rate of increase within the group and the accessions which groups receive as a result of the movements of peoples determine the density and distribution of population.

Movements of peoples have taken various forms. The great migrations of early peoples, the periods of colonization that followed the discovery and opening up of new lands, and the modern immigration movement are examples. Within the state there may be a gradual shifting of population, such as the westward movement in the United States, or a concentration of population, such as the remarkable change from rural to urban life in the past century. In 1800 only five per cent of the population of the United States lived in cities ; in 1940 more than sixty per cent lived under urban conditions. A survey of mankind at any given time, therefore, shows population sparsely settled in some places, compactly aggregated in others. Density of population varies from about 700 per square mile in England and Belgium to about 50 in the United States and about 25 in Russia. The actual density must, of course, be considered in connection with the nature of the territory, its suitability to human life, and the degree of intensification in agriculture, the stage of industrial development, and the extent of commercial activities in each area.

The distribution of population has affected state life in many ways. Aggregation of population in favored areas led to those common interests which resulted in a spirit of unity and to that contact of man with his fellows which led to the need for organization and law. Migrations and the conquests that accompanied them required closer organization than a stationary life demanded, and led to some form of regulation between

ruler and subject and between one group and another. Intermarriage of diverse peoples and the influence of new environment created variations that made for progress and gave rise to new political forms. The migration of peoples that destroyed the Roman Empire and laid the basis for modern European states is a suggestive example. Colonial expansion made necessary the establishment of various forms of colonial government, created interesting problems in the relation of the colony to the mother country, led to difficult adjustments in the governing of backward peoples, and caused important rivalries and wars among the expanding nations. Immigration creates important social, economic, and political problems in internal affairs with which the state must deal ; and the effort to regulate or restrict immigration may draw the state into international difficulties. The growth of large cities has opened up an entirely new field of political science, that of municipal government and administration.

Race. Even a casual glance at individuals shows certain physical similarities and differences. Some of these are personal peculiarities and perish with the individual ; others are persistent and fundamental. On the basis of physical make-up, the population of the earth may be classified according to race. The bases of classification include color of the skin, shape of the skull, hair, stature, and other physical characteristics. People living in the same general areas under similar conditions of climate, food, and occupation develop common physical traits. These are handed down from parent to child and thus perpetuated. Naturally, people of the same original parentage, who remain under the same natural conditions, become racially similar, while intermarriage or change of environment modifies the race type. At the present time, races have been so intermingled that few pure racial stocks remain.

The existence of races influenced state formation in two ways :

1. *As to motive.* Descendants of the same ancestors, similar in physical make-up and in mental characteristics, developed a feeling of unity that made political organization natural and easy. The feeling of race unity and of race superiority has been a powerful and constatnt social phenomenon. In early

times stranger and enemy were identical, and only to people of the same tribe were obligations of morality or justice acknowledged. Belief in descent from a common ancestor was a frequent phenomenon in early states.

2. *As to method.* On the basis of kinship, which underlies race formation, the family developed. In its expanded forms, the clan and tribe, a more elaborate and rigid form of organization arose. The state was, in many cases, the ultimate outgrowth of this organization. Thus, in the beginning of political existence, racial conditions made the state possible and furnished the framework of its earliest organization.

Race is an important element in present-day politics. The existence of several races in the same state creates difficulties, as is indicated by the experiences of the United States with the Negro and with the Chinese and Japanese. International problems frequently arise from feelings of racial difference or from claims of racial superiority. Since the opening of the nineteenth century, the rapid increase of the white race, made possible by increased food supply through invention and discovery and by control of the death rate through advance in medical science and sanitation, led to extensive colonization and gave to the white race political control of a large part of the world. At present the white birth rate is falling rapidly, while other races are increasing in numbers because white control checked tribal wars, diminished the danger of famine, and reduced the death rate by introducing safeguards against disease. As a result, the next century will probably see a considerable territorial readjustment of races, with important political consequences.

Many writers have put forward claims for the superior political genius of certain races. The Greeks and the Romans attributed their achievements to qualities inherent in a peculiarly gifted blood. More recently, emphasis has been placed upon the superiority of the so-called Aryan or Teutonic or Nordic stock. Such claims are viewed with suspicion by modern scholars, because the groups that claim superiority are themselves composed of mixed racial elements, and because there are far greater differences among individuals of the same stock than among racial groups. Theories of racial superiority are often utilized to stir patriotic emotions in time of war and

to justify the imperialistic extension of the institutions and culture of a more powerful state over weaker peoples. There is also wide difference of opinion concerning the value or danger of race mixtures. One group holds that only in purity of race can be found the means of preserving and perfecting superior qualities. The other group emphasizes the advantages of amalgamation in creating diversity and variation, thereby creating a more plastic type and increasing the opportunity for the appearance of superior individuals.

Nationality. Common descent, which played so important a part in early states, has become of little importance to present political science. No modern state coincides with a race. The lines of demarcation that separate races are growing less distinct as peoples more easily migrate and intermarry. The influences of heredity and environment remain ; but to these physical ties are added social bonds that result from the contact of man with man, and the basis of unity in modern states is psychological rather than physical. Secondary groups, called nationalities. emerge, united by a common spirit, by common customs and interests ; and when they form a political unit they become a nation. On this basis modern states have arisen.

No single factor creates nationality. A number of elements, not all of which are always present, combine in varying proportions to give the feeling of subjective unity that constitutes nationality. Among these are the following :

1. *Community of race*. If a people shows marked physical differences from its neighbors, or if it believes in a common origin, or if it feels racially superior and has a prejudice against intermarriage or social contact with other groups, this feeling of racial unity contributes to the formation of nationality.

2. *Community of language*. Language furnishes the medium through which people maintain intercourse with one another and through which they express their ideals and culture in a common literature. Diversity of language separates peoples, prevents them from knowing or understanding one another, and renders difficult the growth of national consciousness. While a few states, of which Switzerland is an example, may

develop a strong national spirit in spite of diversity of language, nevertheless, of all the factors that contribute to nationality, community of language is usually the one of which peoples are most conscious, and for which they will struggle most bitterly against suppression.

3. *Community of religion.* During a long period of human history, community of religious belief was a powerful bond of union and played an important part in the process of national consolidation. The permanence of the Hebrew nationality, the rise of the Mohammedan empire, the wars of the sixteenth century, all showed a fundamental religious basis ; and states considered religious unity a necessary condition for their own existence. At the present time religious differences between Protestant and Catholic form an obstacle to national unity in Ireland, and the cleavage between Hindu and Moslem has prevented the political unity of India. On the other hand, most of the leading states of the world possess a strong national spirit in spite of diversity of religious belief among their populations. The growth of toleration and of freedom of belief has diminished the importance of religion as an element in determining nationality.

4. *Geographic unity.* People occupying a unified territory, especially if it is surrounded by natural barriers, tend to develop the common interests and common spirit that underlie nationality. Nevertheless, national spirit may survive when the population possessing it is distributed among several states, as were the Poles, or when a people is scattered over the earth, as are the Hebrews.

5. *Common political aspirations.* The spirit of nationality usually manifests itself in the desire for political independence, or at least for a large degree of autonomy in government. The principle of "self-determination of nations" is based on the theory that every nationality, if sufficiently numerous and territorially compact, has a sort of natural right to determine its own destiny, to live under its own laws, and to form an independent state. People who live for a time under a common political authority may develop a national spirit and patriotism, even though at first they were composed of diverse national elements.

6. *Community of interests.* Peoples whose manner of life and customs are similar, who have common ideas of right and wrong, who have common economic interests, and who have a common history and tradition rapidly develop a national spirit. Nationality is mainly psychological feeling ; it is a belief on the part of its members that they belong together, that they possess a common pride or common grievances, that they have a common heritage and common traditions. It results from several instincts, including gregariousness, or the herd instinct ; pugnacity, or the fighting instinct ; egoism, which includes the desire for self-preservation and self-aggrandizement, and which is most intense in time of danger ; and submission, or the tendency to follow leaders. Nationality, therefore, is largely a matter of sentiment ; it is a state of mind, a way of living, thinking, and feeling. It is a subjective realization of unity, based on many factors, and the result of a historical development. War is especially important as a stimulus to national sentiment.

The political principle of nationality was little realised until the beginning of modern times. Previously the boundaries of states were determined by the dynastic ambitions and policies of their rulers. By the fifteenth century, however, a feeling of nationalism was developed in England ; and the English attempt to dominate France aroused a national spirit of resistance in that country. By the end of the century, Spain also had become nationally conscious and had expelled her alien ethnic and religious elements. In the sixteenth century, Machiavelli struggled, without success, to arouse national sentiment in Italy. The partition of Poland, in the latter part of the eighteenth century, and the continued desire of the Poles for the restoration of their political existence, gave a marked impetus to the theory of nationality. The effort of Napoleon to bring Europe under his domination aroused passionate popular resistance, and the spirit of nationalism was appealed to by statesmen, orators, and poets in Germany, Italy, Russia, and Spain. The growth of democratic ideas gave an impetus to the ideal of nationalism by transferring allegiance from the king to the nation. Revolutions for national independence were often coupled with a struggle for democracy ; hence

national patriotism was intensified by its association with democratic aspirations. During the nineteenth century revolutionary outbreaks in various parts of Europe aimed at national unity and independence. The Greeks and the Balkan peoples won their independence from the Turks ; and the Belgians separated from the Dutch. Italy and Germany were unified as nations. The First and Second World Wars reawakened national aspirations, and were followed by attempts to redraw the map of Europe more nearly in accordance with national desires, and by national uprisings among subject peoples in many parts of the earth.

It is evident, therefore, that nationality is a potent force in modern politics. As a survey of the surface of the earth shows it to be divided by nature into a number of various geographic units, so a survey of the population of the earth shows its division into a number of various ethnic and national units ; and from the standpoint of both territory and population a natural basis for the state exists. Modern states have usually developed on the basis of a fairly homogeneous population inhabiting a territory with definite natural boundaries, and states generally consider it their duty to protect or improve both the geographic unity of their territories and the national unity of their populations. They make strenuous efforts to assimilate alien elements and to prevent the immigration of undesirables, or to absorb people of similar nationality not yet included in the state. Minority nationalities in a state, if unable to secure independence and self-determination, struggle valiantly for the protection of their language, laws, and local customs.

However, opinion is not unanimous as to the value of a mononational state. Some writers hold that a state may gain in breadth and variety by including foreign elements which keep open communication with other civilizations ; others point out that inferior peoples are raised by living in political union with superior peoples and that exhausted and decayed nations are revived by contact with younger and more vital stock. Still others argue that there is no necessary connection between nationality and government. They hold that nationality is essentially a question of culture, and that diverse nationalities should be able to live together peacefully under the

same government as well as diverse religions. They fear that excessive national spirit will become aggressive and imperialistic and will lead to war. Internationalism, as well as nationalism, was given a marked impetus by the First and Second World Wars.

Importance of the Individual. A discussion of population that views it only as composed of a number of races and nationalities, differing in political ability and tending to form states along certain lines, gives but a one-sided view. Population also consists of individuals, of great men, leaders, and reformers. Just how much of political development is attributable to the spirit of the time that results from general causes and how much to the conscious effort of individuals is one of the most difficult of problems ; and historians have held widely divergent opinions concerning it. To some, all progress is the work of great men ; to others, the individual is helpless unless the world is ready for him. As usual, the truth seems to be between the extremes. Great individuals are both causes and effects. A Cæsar or a Napoleon plays a mighty part, but at the same time conditions are such as to produce these men and make their work possible. All great leaders are largely representative of their age ; yet they may modify it and introduce new ideas that may form the basis of succeeding development. Until recently it was generally believed that the influence of great individuals on the course of events was declining. However, the establishment of dictatorship placed enormous powers in the hands of Franco, Mussolini, Hitler, Lenin, and Stalin, and their ideas and policies were powerful influences on the course of world events. After all, each individual composing the states is a being that wills and acts ; and while at any given time it may be impossible to distinguish between the crank and the reformer, between the man who is opposing the tendency of his times and the man who is starting a new movement toward a new age, in either case the individual is a force that demands consideration.

Just as man may consciously modify the physical conditions of the external world, so may he influence those psychical bonds that create nations and states ; and as the control of man over nature makes progress rapid in material civilization,

so the conscious effort of man to modify his political system makes possible the revolutions and reforms that mark the path of state development.

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CHAPTER VI

THE ORIGIN OF THE STATE

OUTLINE

Forces in State-building
Kinship
Religion
Industry
War
Evolutionary Nature of State Origin
Stagnation and Progress
Theories of State Origin
1. Force theory
2. Natural theory
3. Divine theory
4. Social-contract theory

Forces in State-building. The exact origin of political life cannot be historically determined, since the first subjection of man to some sort of authority must have existed in the earliest beginnings of social life ; and the search for these beginnings carries us back to periods of human development of which we have no accurate knowledge. The human race is highly gregarious, and its evolution was made possible by the formation of social units of various types. Like other social institutions, the state arose from many sources and under various conditions, and it emerged almost imperceptibly. No clear-cut division can be made between earlier forms of social organizations that were not states and later forms that were states, the one shading off gradually into the other. However, in the light of the facts presented by the earliest archæological and literary records and interpreted by analogy with the customs of peoples now living in the lowest stages of civilization, some conclusions concerning the origin of the state may be reached.

Certain tendencies seem permanent in human life. One is the social nature of man, his tendency to live in groups. Another

is the segregation of kind, the tendency to form groups based on some form of similarity or common interest. Such groups may be based on kinship, locality, age, sex, occupation, rank, wealth, and many other distinctions. Such groups perform various functions and control certain aspects of social life. There is also the tendency toward integration, toward the subjection of individuals and groups to a common unity and authority for the regulation of the common interests of the larger group, and for the protection of this group from other similar groups. This latter tendency created the state. At first its governmental organization was simple, and the extent of its control comparatively slight ; but the establishment of a public authority for the maintenance of an orderly existence and for common protection created a political society, which developed later by elaborating its governmental organization and extending its contorl over additional interests and activities.

Aside from those influences of the physical environment that caused men to aggregate in certain places, that separated one group from another, and that created ethnic similarities among individuals of the group, thus paving the way for state formation, the most important forces that have contributed to the origin of the state are (1) kinship, (2) religion, (3) industry, (4) war. These factors are all fundamental and permanent in human life. They arose from the nature of man and his needs. Each tended to create that unity and organization which the state requires, and that realization of common interests and needs which is the subjective basis of state. The existence of all these forces in early social groups explains, in part, both the reasons for state origin and the form in which it first emerged.

Kinship. What is known of the early history of mankind indicates that social organization was closely connected with kinship. Not individuals, but groups of individuals who considered themselves of the same blood, formed the units. The primitive family took various forms, ranging from a condition approaching promiscuity to restricted groups within which intermarriage was forbidden. Descent was traced through the mothers only. At a later stage of development, usually associated with the domestication of animals and the adoption of

pastoral life, the patriarchal family appears. In this form descent is traced through males, and authority is vested in the oldest living male ancestor of the group. The patriarchal family consisted of the father, his wives, his unmarried daughters, his sons with their wives and families, together with the slaves and other property. The authority of the patriarch was absolute. The sons had on rights except of their father's granting, and the property and even the lives of the family were at his disposal. Many matters now regulated by law were in the hands of the head of the family, and the family as a unit was often held responsible for offenses committed by one of its members. Combined families, tracing their descent to a common male ancestor, formed a clan, over which a chief kinsman exercised authority. The main function of this group was to perpetuate the worship of deceased ancestors.

It is probably not true, as was formerly believed, that the state developed directly from the patriarchal family. The family was a social, rather than a political, unit ; its members were virtually chattels of the head of the family, rather than citizens ; and the interests and authority of the family were essentially private, rather than public. The state developed more directly from the tribe, a large unit composed of many families, and governed by a chief, whose right to command was based largely on personal prowess. Moreover, the tribe was based, not on kinship, but on the need for the protection of common interests and the settlement of disputes that arose concerning them, and especially on the need for concerted action for offense and defense in case of war. Nevertheless, the earliest states retained many traces of the patriarchal family and incorporated some of its principles and forms of organization into their political life. The tie of kinship strengthened the feeling of unity and solidarity which is essential to political life. In the authority of the chief, especially in settling disputes, reappeared many of the powers of the patriarch, and in some cases the same man held both offices. The advisory council that assisted the chief was frequently composed of the heads of the various family groups. The principle of heredity, by which authority passed from father to son, has played an important part in political life. Likewise, the principle that

age, which gives experience and wisdom, gives also the right to rule, is based on the patriarchal principle, and has frequently appeared in political organization. The words "senate" (Latin *senex*, or "old man") and "alderman" suggest the part played originally by age in the council of advisers. Besides, admission into the early tribal states was frequently accompanied by the fiction of adoption into the family, so that the principle of blood relationship might be maintained. The part played by the family in the early political organization of Rome ; and in the contest between the patricians and the plebeians, illustrates the importance of kinship in politics.

Kinship, therefore, both strengthened the bond of unity and contributed to the form of political organization in early states, and many of its features survived to modern times. The theory that the authority of the political ruler was derived from the original patriarchal authority of the father has frequently appeared as a support of absolute monarchy. Belief in descent from a common ancestor was a frequent tradition in early states ; and the fact that rights and obligations were respected only among people of the same blood, and that strangers were viewed as enemies, shows the strength of the kinship feeling. The children of Abraham considered themselves God's chosen people—all others were Gentiles ; while to the Greeks all non-Greeks were barbarians. A modified form of this spirit still survives in modern nationalism. Personal relations were more important than the territorial basis in early states. Early rulers were lords of their people, not of their land.

Political organizations and organizations based on kinship, therefore, existed side by the side in primitive society, the former often incorporating certain features of the latter into their systems, or using them for certain purposes. The process of development by which political organization extended its functions and gradually subordinated the other social units to its authority was not uniform in all parts of the earth. The main factors in this development, however, were war ; the strengthening of the territorial basis of authority, especially in connection with territorial expansion ; the differentiation of social classes ; the rise of property and of economic distinctions ; and the growth in the power and prestige of the political

rulers and their assistants, who came to form a privileged bureaucracy. Finally, the state emerged as the all-inclusive and supreme, or sovereign, form of organization, and brought all individuals and associations within its territory under its control.

Religion. Closely connected with kinship as a force in state-building stood religion. Early man, surrounded by phenomena which his limited intelligence could not understand, interpreted them as manifestations of supernatural beings, whose wrath must be averted or help secured by gifts or sacrifices and by acts of ceremony and worship. The chief mysteries were the phenomena of nature and of man himself. The former led to the worship of inanimate objects or of the unseen spirits that were supposed to manifest themselves in objects or natural phenomena. This primitive form of religion, called animism, was accompanied by fetishism, a superstitious belief in the effectiveness of material objects, and later took the form of nature worship, often developing into a beautiful mythology.

The mysteries of human life—birth, death, sleep, dreams, and all the psychological problems which even today are little understood—were vastly more wonderful to primitive men. Their attempts at explanation led to the belief that every person was accompanied by another self, or spirit, which after death remained near his body and demanded sacrifices or ceremonies lest it become an evil demon. The spirit of the powerful patriarch was especially important, and the cult of worshiping deceased ancestors became general. Tribal solidarity and the inviolability of custom and discipline were enforced by a religion common to all members of the group and by the authority of a long line of divine ancestors. The authority of the patriarch over the property, conduct, and lives of his people was strengthened by his position as high priest of a family religion in which outsiders were allowed no share. In course of time a class of medicine men or priests grew up, charged with the special care of the sacred rites, and their authority was placed behind the observance of customary rules of law.

Kinship and religion were therefore two aspects of the same thing, and the unity and obligations of the group were given

religious sanction. The power that such ideas exerted in strengthening the unity of the group, the authority of its chief, and the sanctity of its customs can scarcely be appreciated today. When a sense of political obligation was first realized, the ideas of religious sanction, observance of long-standing customs. and obedience to law were not distinguished. Whatever rules were obeyed were believed to be the will of the gods, who could inflict evil upon those who disregarded them. Early religion, however, was narrow and local. As tribes expanded by incorporation or conquest, the bonds of kinship and of ancestor worship necessarily weakened, in spite of adoption and the fiction of common origin frequently found in early states. Nature worship was better adapted to large areas and diverse peoples and to the growing territorial basis of the state ; and its development, mingled with remnants of the old family worship and with legends of tribal heroes, still formed a common national religion that served as a sanction for government and law.

The value of religion in the evolution of the state can scarcely be overestimated. In the earliest and most difficult periods of political development, religion alone could subordinate barbaric anarchy and teach reverence and obedience. Thousands of years were needed to create that discipline and submission to authority on which all successful government must rest, and the chief means in the early part of the process were theocracies and despotisms, based mainly on the supernatural sanctions of religion. The importance of religion as a force in state evolution was not limited to the earliest states alone. The priestly class has been powerful in government and politics throughout all history, and the theory of the divine right of kings has only recently been abandoned as the chief support of the authority of rulers. Long after the ties of kinship had been forgotten or merged in the general feeling of nationality, common religious beliefs were sufficient to unite peoples, to support dynasties, and to create states.

Industry. In addition to the bonds kinship and religion, other forces existed, which, even in the absence of these, would probably have necessitated some form of organization and authority. No aggregation of people could long exist

without some forms of association, of communication, and of coöperation. In those parts of the earth where population became numerous such conditions were particularly necessary. Increasing contact of man with man compelled some sort of regulation concerning personal relations, even if at first it were nothing more than the enforced subjection of the weak to the strong, or the combination of several against a common enemy. The economic activities by which men secured food and shelter, and later accumulated property and wealth, were important factors in state-building.

Even the crudest forms of economic life demanded a certain amount of coöperation under recognized rules. Organized hunts were undertaken by hunting groups, with the proceeds shared according to generally understood arrangements. Pastoral life made possible an increased accumulation of property, a greater division of labour, and a greater differentiation of social classes based on wealth. Laws concerning theft and inheritance appeared, and the predominance of males over females was given a marked impetus. Agriculture made possible an increased population in a given area, bound men to the soil in a fixed place of abode, made land the chief form of wealth, and increased the economic value of a slave class. It increased social distinctions based on wealth, and necessitated a growing body of law to settle disputes over property. The exchange of goods gave a stimulus to craftsmanship and developed commerce. It further differentiated occupations and classes, necessitated standards of value, created new forms of wealth, broke down the isolation of early groups, and substituted peaceful for warlike intercourse. New forms of organization and an increasing body of regulation resulted from this process and from the concentration of population in villages and cities.

The economic activities of early peoples, therefore, contributed to the origin of the state in several ways. Differences in occupation and in wealth created social classes or castes, and the domination of one class by another for purposes of economic exploitation was an important factor in the rise of government. As wealth increased and the idea of private property developed, laws were needed for the protection and regulation of

property rights and the settlement of property disputes. However, the early patriarchal form of organization that resulted from ties of kinship and religion and from primitive economic activities differed in several respects from the more purely political form of association that grew up later.

1. *It was personal, not territorial.* Membership in the community was based on kinship, real or fictitious, rather than on residence in a common area. Law and jurisdiction went with persons, not with the land.

2. *It was exclusive.* Strangers could be admitted only by adoption or as slaves. There was no desire for large numbers, and the wholesale admission of aliens, as permitted by modern states, would have been inconceivable.

3. *It was noncompetitive.* Life, even in its details, was regulated by custom. The idea of change or progress was looked on with disfavour.

4. *It was communal.* In modern states authority deals with individuals ; in patriarchal society it dealt with groups. Interdependence rather than independence was the ideal. Freedom and rights were the possession of the group rather than of the individual.

War. The development of political institutions, as distinguished from earlier family, religious, and economic groups, was largely the result of migration and conquest ; and the new form of organization was essentially military in character. An association was created which united the population within a given area into an aggregate which functioned as a unit, regardless of other social affiliations or subordinate types of social groups. The tie of kinship was thereby weakened and the territorial bond of union was strengthened. Earlier local and family religions were replaced by more general forms of worship in which larger and more diverse groups could be united. A coercive force, exercised by a person or a group of persons, sometimes temporarily in case of necessity, but gradually growing stronger and more permanent, developed into political sovereignty ; and the sentiment of loyalty to the rulers and to the group was established and sanctified.

The form of organization that resulted from this process was the tribe. In contrast to the family, which was primarily a

kinship group, and to the clan, which was essentially a religious group, the tribe existed for the purpose of offense and defense against other tribes. Community of religion in the tribe was rather an outward symbol of its unity than the basis upon which it was founded. In contrast to the patriarchal head of the family group, who was determined by birth and who ruled as the owner of the persons subject to his authority, the chief of the tribe was selected voluntarily by its members, or at least derived his right to rule from the agreement and acquiescence of his subjects. His rulership was based on personal qualifications, especially ability as a leader in war ; and his duties were mainly direction in time of war and judgment of disputes in time of peace. Sometimes he might also be the head of the tribal religion ; again, the religious organization might develop its priestly class distinct from the political organization.

In its beginnings political organization was simple, and the extent to which it controlled the acts of individual members was comparatively slight ; but, once established, the tribe and its authority furnished a beginning from which the modern state could develop, by elaborating its governmental organization and extending its control over a wider field of human interests and activities. Its executive and judicial functions were first expanded ; finally the exercise of direct legislative authority enabled it to develop into the sovereign political unit which practically monopolizes the legal right to employ physical coercion.

Concerted action for defense or aggression strengthened the solidarity of the group and increased the authority of its organization. The results of conflict demanded regulation concerning the relation of conqueror to conquered and the division of spoils. Successful leadership in war created a ruling military class, and elevated the military head to a position of political supremacy. The other forms of organization, based on kinship, religion, and economic activities, survived and left their traces in the principle of heredity and in the powers exercised in government by the priestly class and by the wealthy aristocracy. The political organization, however, subordinated the other forms of association to its final control, and demanded from all their members an ultimate loyalty.

Evolutionary Nature of State Origin. Obviously no definite step in the history of civilization can be pointed out as the origin of the state. While a general ethnic grouping probably occurred before the state arose, and men sometimes developed a type of family life before they formed political communities, yet even when family grouping was uncertain, elements of the state often appeared. As soon as man rose from the earliest stages of savagery, the need for order and protection for person and property, in the relation of man to man within the group, and of group to group in peaceful and warlike contact, made some form of law, and of government to enforce that law, inevitable. Religious and political authority were for a long time not differentiated, and organization, even when comparatively highly developed, might be for purposes of economic coöperation or temporary military need. However, the general process by which states were formed is fairly definite. It was marked by a growing separation of political ideas from those that were more broadly racial or religious. It emphasized the territorial rather than the personal basis of unity. At the same time political organization became more authoritative. Its functions were subdivided and its parts became more closely interrelated, Custom, enforced by religion, grew into law, enforced and finally created by governmental authority. Political consciousness developed ; and patriotism, replacing declining family and religious ties, indicated the new spirit of unity.

A number of causes aided this transition. Possession of permanent abodes, owing largely to the change from pastoral to agricultural life, with resultant increase in property and in population, demanded protection and adjudication which the earlier kinship system was often unable to furnish. Seldom did the state arise without a considerable mixture of peoples. Both peaceful assimilation and conquest required compromises regarding rights and duties, and emphasized the relation of the individual to the whole rather than to his own narrow group. Especially in case of war did political aspects develop. The patriarch, whose authority was formerly unquestioned, was often unfitted to lead the hosts, and a more vigorous warrior, chosen for this purpose, retained large powers, if successful.

Under changing conditions, decisions concerning disputed points and new rulings on questions unprovided for in tribal customs created new concepts of law and sovereignty. As the duties of government increased, its organization became more elaborate and more consciously political. A subjective feeling of unity created a psychological basis for political existence, and the expression of this unity in a ruling political organization created the state. Once established, the state created its own tradition to secure its permanent support; and its rulers determined to maintain and expand their powers because of the material and social interests and honors that their position gave them.

The transition from ethnic to political organization did not take place uniformly or reach everywhere identical results. The time required for the process, and the remnants of former family and religious bonds, depended on the circumstances in which each state was formed. The organization of government, the attitude of the people to their rulers, and the relations existing among neighboring states all varied in different times and places. The chief fact upon which emphasis must be laid is that the state is a gradual and natural historic evolution. It was neither the gift of divine power nor the deliberate work of man. Its beginnings are lost in that shadowy past in which social institutions were unconsciously arising, and its development has followed the general laws of evolutionary growth.

Stagnation and Progress. Several of the causes that created the state tended to discourage further change or growth. It is therefore not surprising that the earliest states made few permanent contributions to political ideas, and that it was only after a long and tedious evolution that the difficult problems of government approached solution. The warm climates in which social progress began were not conducive to energy; and large populations, making labor and life of little value, minimized the importanee of the individual and prevented initiative and ambition. In fact, the very conditions that at first were most necessary became later the greatest evils. That which was most needed in the formation of the state was discipline and organization. Primitive man must subordinate

his anarchic selfishness and learn obedience. Under these conditions the groups with the best family systems, the strongest religious bonds, and the most rigid customs survived at the expense of more loosely organized groups. Early states arose and maintained themselves only by perfecting their discipline, by making the rule of the patriarch or chief absolute, the sanction of religion and custom inviolable. Stagnation, however, is the fate of any organization that fails to adapt itself to changing conditions ; and the ideals which the infancy of political society created formed a system of caste, of custom, of superstition, and of despotism that still controls a large part of the earth. Progress is a recent and, in many respects, an exceptional idea.

It has been in comparatively recent times, and, in a part of the earth only, that the fixity of early ideas has been replaced by the ideal of progress, and that the modern state has developed. This was made possible by the gradual spread of civilization westward and by the movements of peoples. Aside from the natural advantages of the new environment, mere change of scene and of conditions opened the minds and modified the customs of the new-comers. The contact of tribe with tribe slowly but powerfully affected the ideas of both. New institutions were imitated by some and forced upon others. Change once begun, further change took place more rapidly. In the fermentation of ideas resulting from these movements and conquests, the way for the first time was opened for individual initiative. Under new conditions men disregarded the authority of former conventions, and success was followed by further experiment and improvement. The contact of peoples, with the resultant mingling or conquest, broke down the unity of kinship ; and the narrow tribal religion was replaced by a belief less powerful as it became more cosmopolitan. Thus the bonds of custom that fettered early states were broken by war and by new conditions of life. The idea of individual enterprise and the possibility of conscious change and reform arose, preparing the way for new forms of government and for vastly different ideas of individual liberty.

This progress has taken different forms and has proceeded with varying rapidity among different peoples. In general, it

has been marked by the increasing control of man over the natural environment and by the growing intellectual ability and social organization of the population. Physical ties of kinship have been replaced by psychological ties of nationality as the basis for state formation, and religious and political functions have become more definite and distinct. In this process, law and authority have taken on a human rather than a supernatural sanction; and the need for order and protection, owing to the increasing complexity of economic and social life, has become the chief reason for political life. At the same time, unconscious evolution has given way to purposeful action; and, after numerous costly experiments, men have learned how to extend governing authority safely over wide areas and how to intrust governing powers safely to a large proportion of the people. In this way authority and liberty have been reconciled, and the state, no longer looked upon with dread as a tyrannous monster, has entered upon a constantly widening sphere of usefulness. Many peoples have contributed to this progress; and modern states, building upon the foundations of the past, are still occupied with the effort to adjust political institutions to changing conditions of civilization.

Theories of State Origin. Various attempts have been made to explain in a speculative manner the method by which the state came into existence. These theories were concerned, not primarily with the actual historical process of state origin, but rather with a rational explanation of the way in which the state may have been supposed to originate. These theories were put forward for the purpose of explaining and justifying the existence and authority of the state. They were attempts to give rational answers to the questions of why men lived in political organization, of why they should submit to political authority, and of what limits should be placed to such authority. Among the most important of such theories were the following:

1. *The force theory.* The theory of force held that the state came into existence as a result of the forced subjection of the weak to the strong. One group of thinkers used this theory to justify the state on the ground that the state is power, that

might makes right, and that the essence of the state is a sovereign will[1]. Another group of thinkers used this theory to attack the state because of its injustice, and to urge individual freedom and limited state action. The theologians of the Middle Ages argued that the state was based upon force and injustice, and decried the origin of earthly sovereignty in order to subordinate temporal to spiritual power. Individualists and anarchists believe that the state is an evil, because of their desire for individual freedom. Socialists argue that the state resulted from the aggression and exploitation of laborers by capitalists ; and attack, not the idea of the state itself, but the particular form of the present state, which they ascribe to its iniquitous origin.

2. *The natural theory*. The natural theory viewed man as a political animal, and the state as a natural result of the instinct of sociability[2]. It justified the state as a necessity determined by the very nature of man. It was not the creation of man but an inevitable and natural result of human nature. Accordingly, man could have no existence outside the state. His interests and those of the state were identical, and the state needed no further justification. A modification of this theory viewed the state as arising to meet the essential needs of man, and justified it on the grounds of its usefulness. The purpose of the state was to promote general welfare, and it was justified in taking any action that would be conducive to justice and the general good.

3. *The divine theory*. During a large part of human history the state was viewed as of direct divine creation, and its government was theocratic in nature. In the early Oriental empires rulers claimed a divine right to control the affairs of their subjects, and this right was seldom questioned. The Hebrews believed that their system was of divine origin, and that Jehovah took an active part in the direction of their public affairs.

The rise of Christianity and the growth of the temporal power of the Catholic Church in the medieval period led to a bitter conflict between Church and state and to an active

[1] See H. von Treitschke, *Politics*.
[2] See Aristotle, *Politics*.

discussion of the divine origin of political power. All were agreed that the ultimate source of authority was divine, but the supporters of the church declared that the Pope alone received his power directly from God. The Emperor, they held, received his authority indirectly through the Pope. The supporters of the state argued that the authority of the church should be limited strictly to spiritual affairs and that God delegated to rulers directly the control of temporal affairs.

The leaders of the Protestant Reformation gave further impetus to the theory of divine origin, and taught that civil authority is delegated by God to the temporal rulers and that subjects should give obedience. When the medieval conflict between church and state was replaced in the sixteenth and seventeenth centuries by the contest within the state between king and people, the controversy took a new form. In opposition to the growing ideals of popular sovereignty and of the state as a deliberate creation of the people, the rulers again appealed to the theory of divine origin and looked to the church for support. Interest centered, not so much in the origin of political power itself as in the question of the persons by whom and the manner in which it could rightfully be exercised. Those who supported royal power argued that God had delegated authority directly to kings, and that resistance to royal power was sin. Even after the success of the popular revolutions by which modern democracy was established, the idea of the "divinity that doth hedge a king" continued to exert a considerable influence upon the ideas of the people[1].

4. *The social-contract theory.* The social-contract theory starts with the assumption that man lived originally in a "state of nature," antecedent to the formation of political organization. In this condition he was subject only to such rules of natural law as are prescribed by nature itself, and was the possessor of natural rights. This primitive condition he was compelled to abandon, either, as some held, because it was too idyllic to last, or, as others held, because it was too inconvenient or terrible to be tolerated. In its place men deliberately formed an agreement or contract, by which they set up a body politic. Submitting to the control of all, they received in return the

[1] See J. N. Figgis, *The Divine Right of Kings.*

protection of all, thus losing their natural liberty but receiving in return security. Human law replaced natural law, and each individual became the possessor of political rights and obligations. The state was thus of deliberate human creation, and authority was derived from the consent of the people[1].

While none of these earlier theories gives a satisfactory explanation of the actual historical and evolutionary nature of political origins, nevertheless each contributes elements of value. The force theory overemphasizes one factor in state origin, but points out the important fact that the state, unlike all other associations of mankind, possesses the physical power to compel obedience. Force and power are distinctive characteristics of the state, and war has played a prominent part in state origin and development. The natural theory, while explaining neither the actual influences that created the state nor the nature of the process, emphasizes the important fact that the state is not an artificial creation but an inevitable and, at first, largely unconscious result of man's nature and needs. The divine theory, while used mainly to bolster the claims of rulers and of churchmen, nevertheless suggests the moral responsibility of political authority and points out the important part played by religion in the early period of political life. The social-contract theory, while historically inaccurate, suggests the value of consent as a psychological basis for the spirit of unity necessary for state existence, as well as the necessity that law should be "natural" in the sense that it should represent accepted principles of justice and correspond to the needs of human nature and the circumstances of its time and place. This theory supported the revolutions by which tyrannical governments were overthrown and served as a basis for the growth of modern democracy.

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[1] For discussion of the social-contract theory, see below, Chap. VIII, pp. 112-116.

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CHAPTER VII

THE EVOLUTION OF THE STATE

OUTLINE

Historical Development of the State
1. Tribal state
2. Oriental empire
3. Greek city state
4. Roman world empire
5. Feudal state
6. National state

The Tribal State
The Oriental Empire
The Greek City State
The Roman World Empire
The Feudal State
The National State
1. Monarchy
2. Democracy
3. Colonial empire

General Features of State Development
1. From simple to complex
2. Growth of political consciousness
3. Increase in area and population
4. Types of states
5. Relation of political institutions to other institutions
6. Compromise between sovereignty and liberty

Historical Development of the State. The preceding chapter, in tracing the origin of the state, found difficulty in fixing the exact process by which the state came into existence and in separating political institutions from other closely related forms. Similar problems confront an attempt to outline the historical development of political institutions. The state has not had a single origin or a regular and continuous evolution. The idea, held by many writers, that political development

tends inevitably to pass through regular and clearly defined cycles is not borne out by historical facts. Various forms of state have arisen at different times and places as a result of causes by no means uniform. These states have had widely different histories, and have worked out governmental organizations, far from similar. Thus, at first glance, it seems almost as difficult to follow the state's evolution as it was to determine its origin. However, if attention is directed chiefly to those states that occupied the leading positions in the world of their day and that contributed most to the development of later political forms and ideas, a fairly uniform course of development may be discovered.

In broad outlines, the state has evolved through the following forms :

1. The tribal state
2. The Oriental empire
3. The Greek city state
4. The Roman world empire
5. The feudal state
6. The national state

The periods of time during which each of these forms predominated show wide variation, and within the general type important governmental changes took place. Besides, earlier forms usually survived in some parts of the earth long after later types had arisen elsewhere. There have also been tendencies at times to revive earlier forms among peoples who had passed to the new, and types strikingly similar have arisen independently at different times in widely separated places.

The Tribal State. As the previous chapter indicated, the first states appeared in the form of tribes. These had certain elements in common, though in other respects they showed marked differences, They were usually comparatively small in size, and were governed by chiefs, often assisted by advisory councils. Some were nomadic ; others were permanently settled in definite areas. While the main purpose of their existence was the preservation of internal order and the waging of aggressive or defensive war, they often retained strong traces of common birth, common religion, and common economic interests. The scope of their political power

was narrow, most of the affairs of life being controlled by long-established customs. In some the authority of the chief was despotic ; in others his power was strictly limited by a democratic public opinion, or by assemblies of warriors. In some authority was transmitted by heredity or by some accepted rule of succession ; in others the rulers were chosen freely by members of the tribe. Sometimes the tribal organization was permanent ; in other cases it was temporary, the group easily falling apart into smaller units. In still other cases a number of tribes might be combined into a loose confederation. The tribal form of organization has existed in some parts of the earth through the entire period of recorded history. The aborigines of Australia never progressed beyond that stage, and but little advance had been made in the Western Hemisphere before its contact with Europe. Even today, in underdeveloped parts of the earth and among backward peoples, the type persists.

The Oriental Empire. The next step in state-building resulted from the aggregation of population, the accumulation of wealth, and improvement in the arts of peace and war in regions favored by nature. Warm climate, fertile soil, abundance of water, and a considerable area free from geographic barriers were required to support a large population and to bring about those permanent relations among men that demanded increasing government.

In the fertile valleys of the Nile, the Euphrates, the Ganges, the Yellow River, and the Yangtze, which are called the "cradles of civilization," wealth accumulated and cities arose. Such areas, furnishing abundant food with little effort, attracted surrounding peoples and led to that conflict and intermingling which was so important in creating the state, as contrasted with the earlier kinship organizations. Through loose alliances, or through the conquest of the weaker by the stronger and more aggressive city, the inhabitants of these valleys were bound together into the empires of Egypt, Babylon, Assyria, India, and China. These empires were not strongly centralized, but were made up of subordinate units, practically autonomous in local affairs, yet under central supervision, obliged to furnish soldiers and to pay tribute.

Warm climate and easily obtained food made possible the beginnings of civilization, but soon checked energy and caused stagnation. Abundant population and frequent conquests created a large servile class, with resultant social differences, castes, and despotism. Religion crystallized into temple worship, overshadowing the ancient rites of the household, and a close corporation of priests developed into an exclusive and highly organized instrument of social control. The need for social protection, especially in connection with increasing property and with frequent wars, and the ambition for power on the part of the ruling classes, led to a hierarchy of officials, culminating in a king or emperor, surrounded by a court of growing complexity, and with a code of manners and a mode of life that set it apart from the rest of the people. Rulers were exalted, with corresponding abasement of subjects, since free political coöperation over a large area was impossible because of the difficulty of communication. A permanent armed force replaced the spontaneous musterings of the tribe, and the military order became a strong conservative force translating the idea of service into the fulfilment of a command. With the political, priestly, and military classes reenforcing each other in stabilizing society through authority and subordination, the way was prepared for leaders who imposed the principle of dominance over their own subjects and who were ambitious to extend it by conquest over others.

The creation of empire brought new political problems. To unify authority over a large area was difficult in an age of slow communications. The provincial magistrates, possessing a large measure of autonomy, were frequently tempted to revolt against the central authority. Powerful nobles in the court stood jealously ready to defy the emperor, especially when hereditary succession placed the scepter in weak hands. Thus the early empires present a picture of instability ; at best they were a loose aggregation of semi-independent states, with authority shifting from dynasty to dynasty and from city to city. Some fell from external invasion ; others were destroyed by internal dissensions.

The problem of government is largely one of proper adjustment between authority and fraedom, and of extending this

adjustment in a permanent and stable union over a considerable area. The Oriental empires accomplished neither. Based on conquest, they had no real cohesion and fell apart whenever the ruling dynasty was weakened ; based on fear, they represented to the people only the slave-driver and the tax-collector. Neither unity in the state nor liberty for the individual was possible under such conditions. While these great empires performed valuable service in establishing the beginnings of culture, in breaking down the narrow local basis of tribal organization, and in familiarizing mankind with widespread authority, they offered little hope of individual or political progress. Despotic power, unchecked by popular will, viewed the state as property, and the people merely as subjects. This defective basis of political authority the Oriental empire could never remove, and the course of political development was transferred to new peoples and a new form of state.

The Greek City State. The Oriental empires were essentially agricultural, land powers. To them the sea was a barrier, not a highway ; and the centers of their civilization lay, not on the coasts, but in the valleys. As civilization spread to the region around the Ægean and Mediterranean, important physical differences were found. Europe is a peninsula, oceanic rather than continental. It has a climate more temperate and products more varied than the river valleys of Asia. The land is broken up into small units adapted to both intercourse and defense ; while the seas, though permitting communication, made invasion from Asia difficult. Hence civilization, though arising later reached a much higher and more varied development than in Asia, and the nature of political organization was correspondingly different.

On the coasts of the Ægean Sea and on the islands stretching across it appeared the first maritime states, a new and epoch-making form of political power. In this area diverse types of peoples intermingled and fused. Products and ideas were exchanged, and the minds of men were liberated from the tyranny of fixed customs. While pastoral nomads had mobility without wealth, and agricultural peoples had wealth without mobility, the seafaring peoples possessed both advantages. In contrast to the expansion of land empires by con-

quest, requiring constantly increasing armies and making the problem of government ever more difficult, sea powers expanded by colonization, linking strategic centers together by the common advantages of economic ties.

Although advanced civilizations appeared early in Crete, Troy, Mycenæ, Tyre, and other maritime centers, it was in Greece, between the fifth and fourth centuries B.C., that this form of culture reached its highest development and made its chief contribution to political development. Greece has been called the "most European of European lands." In a little district of ten thousand square miles are found, in miniature, all the characteristic features of Europe. The mountains and the sea break up this area into numerous valleys and islands, easily defended, yet, because of the sea, not isolated. In contrast to the uniformity of Asia, the variety and moderation of nature in Greece developed a different mental attitude and genius. Growth of population led naturally to trade, commerce, and colonization, the wine and olive oil which her hillsides furnished being an excellent medium of trade. Under these conditions a new form of state was created. Patriarchal tribes, coming into this area as invaders from the north, built their villages on easily defended hills. In the secluded valleys, guarded by mountains and the sea, yet in constant contact, through their harbors, with the outside world, groups of villages united under a single polity and gave a new emphasis and a distinctive form to city life. Natural barriers made the union of these cities difficult ; hence each city developed an intense life of its own. Before its claims all other human relationships took second place, and earlier ties of kinship were replaced by a patriotic sense of citizenship.

Many influences combined in the Greek cities to prevent the despotism that fettered the earlier empires. Religion bore less heavily on the Greeks, and no priestly class existed to reënforce authority. The small size of the city destroyed the mystery of authority remote and secluded. The active, changing life of the city sharpened men's wits, made them more critical and competitive and less likely to endure oppression without question. The more complex order of city life demanded more regulation, brought government closer home to each citizen,

and led him to examine and question his laws and his government. The city is the natural home of organized democracy, in contrast to the formless equality of tribal life and the despotic rule of empire.

The internal development of these city states followed, in general, the same political evolution, though the form of government that finally resulted differed in the various cities, Tribal chiefs became the kings of the Homeric period. Their powers diminished and passed into the hands of oligarchs, aristocratic nobles who controlled the councils and magistracies of the city. The selfishness and oppressiveness of the oligarchs led to a contest with the common citizens, as a result of which a more or less democratic constitution was set up. In this process a dictator, or "tyrant," frequently arose who suppressed the nobles by the aid of mercenary armies and popular support, but who was removed by the people when they realized their strength. While a large part of the population of the city was composed of slaves and other unfranchised residents, within the citizen class political and civil rights were widespread. Each citizen was expected to take active part in holding public office and in deciding public questions.

Thus each city developed an intense, patriotic life, absorbing the energies of its citizens, and identifying their life with that of the city. Factions within the city, however, foreshadowing the political parties which seem an inevitable accompaniment of democracy, created internal dissension, and weakened the cities within. Besides, this democracy, adapted to the city state, was effective only in small areas. Its perfection intensified jealousy among the cities and prevented the formation of a national Greek state. Neighboring cities were viewed as enemies, although leagues, under the headship of a dominant city, were sometimes formed. Lack of unity was the chief weakness of the Greek political system. Facing east, Greece came into contact with the powerful Oriental empires, and was compelled to wage defensive war. This checked expansion and compelled a concentrated internal development. Mutual jealousy prevented any union except loose confederations, and frequent wars among the cities destroyed, in turn, the power of the strongest. Greece, thus weakened, was at length united only

when conquered by an outside power, first Macedon, then Rome.

In one respect the city state made an important contribution to political thought. Organized self-government and individual freedom had been developed, and on this basis a brilliant, if brief, civilization had arisen. Only in small states, however, was this form of political life possible. The remainder of the world was not yet ready for democracy, much in the way of perfecting a wider organization first being needed. This unification was secured by Macedon and Rome at the expense of democracy, and the work necessary for modern civilization destroyed much of the Greek contribution to politics. It was not until the Teutonic barbarians later grafted their individual freedom with Roman organization, and developed the system of representation and local self-government, that a democracy stable over large areas became possible.

The Roman World Empire. The conquests of Alexander the Great about the middle of the fourth century B.C. destroyed the independence of the Greek cities, extended the control of Macedon over a large part of the Eastern empires, and restored for a time the Oriental-empire type of despotism. His empire, however, was short-lived, and fell to pieces after his death. The main line of political development passed westward to Rome. The beginnings of political life in Italy were similar to those in Greece. Natural advantages of location, climate, and resources led to increase of population, mingling of peoples, and advance in civilization. While the mass of inhabitants lived in loose tribal organizations, a number of small city states gradually arose. These were not commercial, as in Greece, but were the centers of the surrounding agricultural area. One of these, at first by no means the most important, was formed by the union of several tribes occupying a group of hills in the fertile plain of the Tiber.

A number of causes led to the preeminence of this city. Its central position and its location at the head of navigation of the only important river gave it considerable advantage. Besides, the various settlements on neighboring hills soon compelled isolation to yield to federation or conquest, and numerous hostile neighbors kept alive warlike ability. These

conditions resulted in fusion of peoples. Thus in Rome the rigid fetters of custom were broken earlier than usual, and necessary compromise and treaty, resulting from the relations of various tribes, began the growth of Rome's wonderful system of law ; thus the work of conquest began that was finally to create the Empire.

In its early internal development Rome showed the same tendencies as the Greek city states. King, council, and assemblies grew out of the patriarchal family organization ; monarchy was replaced by an aristocracy of birth and wealth, as consuls, prætors, and senate replaced the king ; and a strong movement toward democracy was indicated by the widening of the assemblies and the increased privileges of the plebeians. The ruling classes of Rome perceived what the Greek cities never learned, that a city state cannot resist its enemies without if torn by dissension from within. By extending citizenship within the city they secured stability and union. But before this tendency toward a democratic, compact city state could be carried to its logical conclusion, as it had been in Athens, a new series of events changed the whole course of Roman development, resulting in a new type of state and in several important contributions to political ideas.

Geographic conditions in the main account for the difference in the trend of Greek and Roman politics. Italy is better adapted for internal unity than Greece. The divisions are larger and less distinct, the plains and uplands better suited to agriculture, and the absence of harbors and islands offers fewer advantages for commerce. Hence, while civilization was delayed, energy was kept at home until Italy was united into a single state under Rome's headship. Here again, as the armies of Rome triumphed, her former enemies were incorporated into the state and made citizens, and the territory of Italy was consolidated. The process, however, did not stop at this point. The direction of external effort further affected Rome's progress. With the Apennines near the eastern coast, and the fertile plains, rivers, and harbors on the west, Rome naturally had little contact with Eastern peoples until her institutions were well established. On the contrary, she faced toward Gaul and Spain, and through Sicily, toward Africa. Her first wars

were with inferior nations and led to conquest, to expansion of territory, and to the civilizing of fresh, vigorous peoples. Adding sea power to land power, she emerged victorious from a life-and-death struggle with Carthage by the end of the third century B.C. Later, the fragments of Alexander's empire in the East came also under her sway, her central position enabling her to concentrate her forces and conquer her enemies in detail. Rome thus entered on the final stage of empire, extending her control over world-wide dominions, within which power and citizenship could no longer advance successfully together.

It was this career of conquest and expansion that compelled Rome to develop a new form of state. The city-state constitution broke down when it was applied to a wide empire, and the tendency toward democracy was checked by the need for a vigorous and consistent policy in dealing with various peoples in all parts of the earth. Only at Rome could the citizens share in government ; and real power fell into the hands of the wealthy aristocrats, who controlled the votes of the Roman mob, and of the army, which alone could control the provinces. The attempts of various leaders to use one or both of these sources of power resulted in the series of civil wars that marked the end of the republic. Bureaucratic and despotic empire was the inevitable outcome of such conditions. A religious sanction was added to the new authority, and worship of the Emperor became a patriotic duty. Concentration of authority, uniformity of law, centralized organization—these were needed to bind the wide domain of Rome into a state and to secure order and peace throughout her reach. How well Rome succeeded in creating a successful imperial organization is shown by the fact that her rule lasted for five centuries in the West and for fifteen centuries in the East. The Christian church developed its organization on a Roman basis ; the ideal of world empire long outlived the destruction of actual unity ; and Roman law and Roman methods of colonial and municipal administration underlie modern systems. Sovereignty and citizenship were worked out by Rome, and her methods of binding divergent nations into political unity have never been surpassed. The maintenance of peace for centuries within the civilized world

was a great boon to mankind. Rome taught the world that a large state might be stable and successfully governed, and her ideal of world unity underlay the later development of international law and later attempts at world organization.

The formation of this united and well-governed empire was not accomplished, however, without accompanying evils. From the time of Cæsar onward, citizenship was extended, but it no longer carried with it any share in government. To secure unity and authority, individual freedom and democracy were sacrificed ; local self-government disappeared as centralized administration grew. Greece had developed democracy without unity ; Rome secured unity without democracy. Rome's system prevented political education, and its very perfection brought about its ultimate fall. The ability to combine sovereignty and liberty, to make democracy possible over large areas, and to secure the best interests of both individual and state was reserved for a later time and a new people. Rome contributed but one side of political development,—sovereign organization, wide unity, uniform law, and world peace,—the side most needed at that period of state formation.

The Feudal State. The unity which the principle of citizenship gave to early Rome became meaningless with the expansion of Rome to world empire. Imperial Rome depended increasingly on the army and the doctrine of power, and this gave no satisfactory basis for solidarity. When the state failed, men sought refuge in kingdoms not of this world and in individualistic philosophies. The state was thereby disintegrated, and this internal decline made it difficult for Rome to maintain her frontiers against those Teutonic barbarians whom she had been unable to conquer. Great numbers of these were gradually admitted and many found service in the army. By the fifth century of the Christian Era the boundaries were so indistinct, the army so largely barbarian, and the pressure along the frontiers so great that the declining empire in the west fell to pieces and was parceled out among the various Teutonic tribes. In the east the Byzantine Empire maintained for many years the framework of authority, and the rise of the Mohammedan religion created again a great state of the Oriental-empire

type ; but in western Europe the state disappeared and had gradually to be rebuilt in a primitive society.

The work of the Middle Ages was the gradual fusion of Roman and Teutonic population and institutions, the former predominating in the south of Europe, the latter in the north, This process was marked at first by considerable destruction. In the Dark Ages, Roman civilization and Roman political ideas seemed almost lost. Society crystallised around the church, which set up its dominion in the name of Rome, and around the fragmentary territorial units ruled by warrior or noble. With the Renaissance came the gradual emergence of many of the old ideas and institutions, modified, of course, by ideas and institutions of the Teutons. The result of this process was modern civilization and the modern state, and during this process such political life as existed was largely of the peculiar transitional form commonly known as "feudal."

To an understanding of the feudal state some knowledge of political methods among the Teutons is necessary. Before entering the Roman Empire their organization was of the tribal form. Largely because of physical conditions and undeveloped economic life, the Teutons had continued their rural organization and had not created the city state. Their system emphasized the importance of the individual as opposed to the sovereignty of the state. Such authority as existed was based largely on personal loyalty. Leaders were chosen by the people, and ability in the activities that a vigorous, warlike people love was the basis of choice. Popular assemblies in the various units were held, and all freemen had a voice in affairs. Teutonic ideas of law and justice, while crude and unsystematic, contained possibilities of growth and added an important element to the Roman law, which had been codified and was in danger of stagnation.

These elements, emphasizing individualism, liberty, and local self-government, were directly opposed to the Roman ideals of authority and centralization ; and the immediate result of their fusion was the apparent destruction of all organized political life. The absence of central authority, and the need for some form of protection and order, placed political power in the hands of every man that was strong

enough to wield it. Destruction of Roman commerce and an undeveloped economic system made land the chief form of wealth ; and as land was parceled out among the conquerors, governing authority went with it. Thus were brought together the holding of land, the exercise of political power, and the Teutonic personal relation of vassal and lord. The increasing wealth of the leaders, the influence of Roman ideas, and the confusion of the times strengthened the nobility, while the popular assemblies decreased in importance and, in many parts of Europe, disappeared. Thus Europe was split up into a large number of political fragments, some of which were held together by more or less definite ties to a common superior, to whom they owed allegiance and military service ; but in practice each fragment knew no law but its own. Such a condition naturally resulted in disorder and anarchy, in conflicting laws and authorities, in the complete subordination of the mass of the people. Neither unity nor liberty was possible in feudalism, and the political development of centuries seemed wasted.

The only institution that retained its unity during the Middle Ages was the Christian church. Growing up on the ruins of the Roman Empire, it adopted imperial organization, and its power was further strengthened by the superstitious reverence in which it was held by the converted barbarians. The absence of strong government and the power of religious ideas over the minds of men led the church to take upon itself many functions of the state. Preservation of peace and order was largely in its hands, and with its growing wealth in land came corresponding political authority. Even a separate system of law and courts for its clergy was developed, and its monopoly of learning made great churchmen the chief officials and advisers in government. The head of the church claimed superiority to all princes and the power to release subjects from their oaths of fidelity. Thus another element was added to the already confused sovereignties, and the way was paved for the bitter conflict later between church and state.

In spite of actual conditions, the idea of a common superior, resulting from the prestige of the Roman Empire, and the idea that it should be eternal, survived ; and the titles of "king" and

"emperor" remained, even though their holders had little real authority. Naturally the church was the champion of authority, and by its aid efforts were made to restore the political unity of Europe, to set up a Holy Roman Empire. Charlemagne came nearest to success; but his work was temporary, and his successors could not again unite even his domains. Decentralization, doubtful sovereignty, conflicting allegiances and laws, union of church and state, and the association of landholding, political power, and personal loyalty—these characterized the politics of the Middle Ages. The world empire of Rome had been destroyed and as yet no new form of state had arisen to replace it.

The revival of commerce, toward the close of the Middle Ages, restored the trading centres; and cities, especially in Germany and Italy, where the central political authority was weakest, grew rich and powerful. The mercantile and commercial aristocracy of the cities differed from the landed aristocracy of the country, and was hostile to the feudal system. It asserted and achieved independence from the feudal lords, and revived for a time the ideals and institutions of free city states. As usual, progress toward democracy was made in the free cities; but their independent life was short, and they were soon brought under the control of the new type of state that marked the beginning of the modern period.

The National State. Out of the chaos of feudalism a definite form of political life gradually appeared. The spiritual principle and temporal power of the church were not in harmony, and movements for reform within the church weakened its unity and attacked its claim to political leadership. As population became stationary and common interests developed, it became increasingly evident that new states would, in general, follow geographic and ethnic lines. Bonds of nationality and language, strengthened by natural boundaries, grouped the feudal fragments into more and more permanent combinations; and France, Spain, England, Switzerland, the Netherlands, Russia, and, later, Germany and Italy arose. This separation into distinct states, each with its own national spirit, destroyed the idea of a common superior and made possible the rise of international law and the modern

theory of the sovereignty and legal equality of states. Similarly, the growth of a strong government in each of these states destroyed the independence of local rulers, attacked the influence of the church, and separated religious and political ideas, although more than a century of religious wars, civil and international, was needed before this distinction was realized.

1. *Monarchy*. These national states emerged as absolute monarchies. The great enemies of centralized authority were the feudal nobles, and their destruction was necessary before a strong state could exist. The Crusades killed off many of these nobles and impoverished others ; in England the Wars of the Roses served the same purpose. The growth of industry and commerce and the rise of towns created other forms of wealth in addition to land, making the nobles no longer the only wealthy class ; and the use of gunpowder destroyed their military supremacy. As the power of the nobility diminished, their strength passed into the hands of the growing kings. A national army and a national system of taxation replaced the feudal levies. The mass of the people, just rising from serfdom, ignorant and unorganized, were no match for the monarchs when the nobles, who had so long stood between them and the kings, were gone. In fact, in many cases the people welcomed the strong government of their kings, partly because they desired peace and security, and partly because of the growing national spirit that centered in the monarch as representing the state. The revived study of Roman law reënforced the doctrine that law is the will of the king. In this general way arose the absolute monarchy of the Tudors in England, of Charles V in Spain, and of Louis XIV in France. A national state with centralized government in the hands of an absolute monarch—organization again without freedom—was the immediate outgrowth of the decaying feudal system ; and the series of dynastic wars and alliances that mark the seventeenth and eighteenth centuries indicates both the strength of the monarchs and the rivalry of the separate nations.

As might be expected, the development of national states was not uniform. Local conditions and past historic development gave each state its own peculiar form. In England,

where the strong monarchy of the conquering Normans had early secured unity, feudalism never flourished ; and the Teutonic population, retaining many features of their democratic institutions, early began the struggle against royal authority. It was only when the nobles, who were allied to the lower classes more closely in England than elsewhere, had been weakened that this gradual democratic development was checked and the absolute monarchy of the Tudors and Stuarts became possible. On the other hand, absolute monarchy was the logical outcome of French conditions. Starting with the most complete feudal decentralization, the Capetian line gradually extended its territory, perfected its administration, and secured uniformity of law and a national army and finance. A centralized French monarchy had been its ambition for centuries. Germany and Italy, because of their connection in the Holy Roman Empire,—causing every aspiring German ruler to waste his resources in devastating Italy,—because of their long struggle with the Papacy, and because they were the battleground of Europe in both religious and territorial wars, were unable to secure national unity and strong government until the nineteenth century.

2. *Democracy.* The next step concerned the conflict of king and people within the national state. With the growth of intelligence and wealth the mass of the people demanded more political rights and privileges. The forces of nationality, which had at first found the symbol of their unity in the king, demanded a fuller and more active expression. The overthrow of the feudal system destroyed the innumerable vertical groups of society and led to a horizontal division into classes or estates that had common aims and interests. Economic changes diminished the importance of the landed aristocracy and created a new class of industrial workers whose outlook was different from that of the peasant and whose power to influence the state vastly greater.

In addition, representative government was created. Thus both the motive and the machinery of democracy existed, and absolutism in reality hastened its progress. Power in the hands of the monarch was more apparent and more easily attacked than when possessed by a number of feudal aristo-

crats ; and when the divine authority of the ruler was questioned, the people began to realize that power lay in their hands if they wished to wield it. The nineteenth century witnessed the rise of democracy, accompanied by more or leas disturbance in proportion as the old order was established and refused to yield.

Here again the process was not uniform in all states. In England the growth of democracy—the completion of a process long begun—was, in the main, gradual and peaceful. In France the rise of democracy meant a complete break with past tendencies, and caused the terrors of the Revolution and the rise of a Napoleon. Elsewhere the monarchs learned wisdom by experience and yielded as political consciousness spread among their peoples. Local self-government, with representation for common affairs, and written constitutions, with guaranties of civil liberty and restrictions upon government, were the usual arrangements that resulted. In many cases the king remained as a historic figurehead, but real sovereignty passed to a large proportion of the population, and the state rested on a broad basis. Growing democracy demanded a wider suffrage. It aimed at the responsibility of ministers and the preëminence of the legislative branch of government. It demanded the right to elect representatives and to select the candidates for election. It endeavored to improve the machinery of representation so that all elements of public opinion should be represented, and it demanded that, after election, representatives should continue to be influenced by the public opinion to which they owed their existence

The growth of democracy was accompanied by the belief that the sphere of authority should be limited. Civil liberty, as well as political rights, was demanded, and freedom of religion and of opinion was desired. Even in the economic field it was believed that the state should interfere as little as possible. Democracy and individualism were at first closely associated. With the successful accomplishment of democracy, however, the people changed their attitude toward government, and were willing to intrust it with wider powers. Authority in their own hands was not feared. On the contrary, the government was appealed to for aid and for regulation.

The past century has seen a steady increase in the scope of state power ; and socialistic theories that would give the state full control of economic interests have arisen and have been given practical application in modern states.

Thus modern democratic national states represent the most advanced form of state evolution. With ethnic and geographic unity they have a strong natural basis ; and by combining local self-government and representation they secure that adjustment of liberty and sovereignty which, even over large areas, may subserve the interests of both individual and society. However, many minor relations within the state are still difficult to adjust, and the relations of state to state are as yet by no means satisfactory. In recent years the theory of constitutional representative democracy has been seriously attacked. At one extreme is the demand for the efficient government of a strong dictatorship ; at the other extreme is the demand for economic equality and the control of the state by the working classes. Experiments of both these types are now being tried.

3. *Colonial empire.* At present time two tendencies, both powerful, yet in many respects antagonistic, exist. On the one hand is the emphasis placed on ethnic and geographic unity. The national state, with well-defined natural frontiers and with a homogeneous and united people, seems to be the goal toward which the development of the past five centuries has tended ; and states wage war to secure or maintain their "natural boundaries," and use every means to increase the solidarity of their populations. The Great War, with its emphasis on the "self-determination of nations," gave a strong impetus to this tendency. A number of well-organized, yet distinct and often rival, national states is the logical outcome of this movement. On the other hand, many influences interfere with this process. The formation, during the past few centuries, of great colonial empires, composed of widely scattered areas and most divergent peoples, has tended to destroy the geographic and ethnic unity on which the national state was based. The process of colonial expansion began almost as soon as the national states were created, and each state, as soon as it became powerful, demanded its "place in the sun." The

subjection of dependent peoples is not compatible with the self-determination of nations or with the theory of democracy. Besides, the growth of enlightenment, which makes sympathy more cosmopolitan and the unity of mankind more real, is attacking the former narrow ideas of unquestioning patriotism and of national supremacy. Finally, the enormous expansion of economic interests, by which the whole world has become a single market, with trade and investment no longer limited by natural or political boundary lines, is destroying the economic unity and self-sufficiency of the national state. Internationalism, as well as nationalism, is a powerful force in present-day political thought, and plans of world organization receive serious consideration. Whether these apparently opposite tendencies are in reality only two sides of the same movement, looking to the ultimate formation of a real world federation on the basis of national units, the future alone will reveal.

General Features of State Development. The preceding discussion gives a brief survey of the evolution of the state among those peoples that have contributed to modern political thought. Several generalizations may be drawn from this material :

1. *From simple to complex.* As in the evolution of all organizations, the process has been from the simple to the complex. Governmental organs have differentiated and their functions have become more definite, and this process has been accompanied by increasing unity as the interrelation of part and part became more complete. Consequently, the authority of the state, which was at first uncertain and irregular, grew more definite, at the same time making possible greater individual freedom, since the action of the state was no longer capricious or despotic.

2. *Growth of political consciousness.* The development of the state has been accompanied by the growth of political consciousness and purposeful action. Early stages of social union were largely instinctive, but man gradually came to realize the possibility of making changes by his own deliberate efforts. Laws originated from legislation as well as from ancient custom ; governmental organization was remodeled, its functions narrowed or expanded ; and the idea of reform and pro-

gress arose. As political consciousness spread over a constantly widening proportion of the state's population, democracy developed ; and, as sovereignty rested ultimately on a more extended basis, the existence of the state became more stable.

3. *Increase in area and population.* In general, an increase in the area and population over which the sovereignty of the state extends characterizes the evolution of the state. While this process has not been uniform, as a comparison of the Roman Empire in the past with several small states at the present time bears witness, it is sufficiently marked to merit attention. Four modern states control more than half the entire land area of the earth, the British Empire alone covering over one-fifth. When compared with the large number of political communities into which primitive man was grouped, or with the hundreds of fragments into which feudal Europe was divided, the half-hundred sovereign states of the present day show considerable progress toward unity. The advance in political ability, making possible the successful working of governmental organization in large areas, the developments of communication and transportation, and the improvements in economic conditions, enabling a given area to support a large population—all tend to increase the size of the state and the number of its citizens. Obviously, the form of government and the power of a state in peace and war will be affected by the extent of territory and by the number of inhabitants, size being a source of strength or weakness according to the conditions in each state.

4. *Types of states.* The types of state that have appeared in the process of evolution fall into certain general classes. At one extreme stands what may be called the community state. This type is small in area and numbers and consists of a natural local group. The tribal state, the city state, and the feudal state belong to this form. Geographic and economic conditions in the main determined which form the community state would take. Undeveloped hunting and pastoral peoples have lived in the tribal form throughout the entire period of human history. Agricultural villages, when not subordinated to a strong central authority, frequently take on the feudal form of organization. This type appeared for a time in Egypt

and Japan, as well as in medieval Europe. Commercial and industrial centers, under similar conditions, became free city states, and this type appeared at several periods of political development. At the other extreme stands the world-empire type. This form ignores natural barriers and diversities of peoples, and aims, usually by conquest, to bring the largest possible area under a single political control. The ancient empires of the Orient, the Greco-Oriental empire of Alexander, the Roman empire, and the attempt of Napoleon to unify Europe are examples of this form of state. The ideal of world federation, represented imperfectly in the League of Nations, has certain similarities to the world-empire type, though differing in the voluntary process of union by which it is put together, in the fact that the central authority is a representative assembly rather than an imperial head, and in the autonomous control of internal affairs left to the component members. Between the community state and the empire stands the national state, which rests on the patriotic principle of nationalism and gives attention to natural geographic frontiers. The national colonial empire is a combination of national state and empire, the national state exercising more or less control over scattered and diverse colonial possessions.

5. *Relation of political institutions to other institutions.* State development has been marked by the separation of politics from some institutions and by increasing governmental control over others. Religion, which was at first closely bound up in state existence, is today almost entirely separate ; the private life of individuals is under less state supervision than formerly. On the other hand, the idea that the state should carry on certain activities which public welfare demands, and which individuals cannot or will not undertake, is gaining ground. Education, sanitation, the care of defectives, and the prevention of crime are illustrations of this kind of growth. During the past century, especially, the fundamental changes in economic life have caused a complete reversal in the attitude of men to the state. Instead of the individualism that opposed the extension of state functioning, there is now a growing demand for increased activity on the part of the government in its relation to business. At the same time this state inter-

ference, now eagerly demanded, differs from the state interference of earlier centuries. That was executive in nature, irregular, and often capricious in enforcement, and removed in sanction from popular control. Such governmental encroachment has been greatly reduced. The expanding authority of the modern state is legislative in nature ; and our detailed statutes, multiplying year by year, are at least fairly definite and uniform, and have their origin in popular representative bodies. However dangerous in the future the zeal for making law may become, men have not yet wholly lost their traditional hatred of executive power or their trust in representative assemblies.

6. *Compromise between sovereignty and liberty.* In many ways the most significant general feature of state development is the method by which the compromise between state sovereignty and individual liberty has been worked out. Primitive man, untamed and anarchistic, needed to be taught obedience ; hence the first successful states were those whose customs were most rigid and whose organization was most despotic. Such a system was fatal, however, both to the progress of the individual and to unity when the state expanded. On this basis the Oriental empire possessed neither organization nor freedom. The Greeks, in developing individual freedom, sacrificed unity ; Rome, perfecting her organization, crushed liberty. The Teutons, combining their political ideas with the ruins of Roman institutions, ultimately evolved the modern democratic national state, man's most advanced political product. In it the diminutive size of the city state, too weak to carry on the activities necessary for defense and public welfare, is avoided, as well as the unwieldy and stagnant uniformity of the world empire. The physical basis of ethnic and geographic unity is utilized, and political bonds are strengthened by common sentiments and interests which seem natural and inevitable. Finally, by the principles of local self-government and representation, an organization which secures unity in common affairs without sacrificing individual liberty is made possible, and democracy over large areas is at last secured. That the ultimate form of the state has been reached is not likely. The balance between sovereignty and liberty is too nicely adjusted to be easily maintained, and tends always toward despotism on the one hand

and anarchy on the other. Constant vigilance is necessary to preserve this balance under changing conditions, and modern states are not agreed as to what is the proper adjustment or how it may best be secured.

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CHAPTER VIII

THE THEORY OF THE STATE

OUTLINE

Nature of Political Theory
Conservative and Radical Political Thought
Sources of Political Theory
Problems of Political Theory
Theories of the Nature of the State
1. Juristic theory
2. Organismic theory
3. Contract theory
4. Idealistic theory
Value of Political Theory

Nature of Political Theory. Early social organizations arose spontaneously from the needs of mankind and, for a long time, grew without conscious direction. Later a point was reached when man began to examine his beliefs and his social customs and institutions, to question their authority, and finally to plan deliberate change and progress. Of all social institutions the state has been one of the most universal and most powerful. Some form of organization and authority, enforcing rules of some sort, has been found wherever human life existed. In the process of human development it was therefore inevitable that man should investigate this institution, should question or uphold its authority, and should dispute over the proper scope of its function. As the outcome of this process political thought arose. Crude beliefs, mingled with concepts by no means political, were followed by more reasonable theories, which, sometimes in advance, sometimes lagging behind, in general kept pace with actual political methods. Increasing powers of observation and of logical analysis built up a constantly widening sphere of political speculation, and the development of the state in its objective

phase of organization and activity was accompanied by its subjective phase, the theory of the state, in the minds of men and in the records of tradition and literature. Some of the greatest minds of all ages have devoted themselves to this study.

A close relation usually exists between the political thought of any given period and the actual political conditions then existing. Most political theories arose either to explain and justify the authority that men obeyed or to criticize it in the hope of accomplishing change. Sometimes, it is true, political philosophers speculated concerning the ideal state, or drew imaginative pictures of political conditions as, in their opinion, they should be. Even this type of political utopia, however, will, if closely examined, prove to be based on the political ideals of its time, and will usually be aimed at certain specific evils to which the conditions then prevailing gave rise. Ordinarily, political theories are the direct result of objective political conditions. They reflect the thoughts and interpret the motives that underlie actual political development. They indicate the conditions and the intellectual point of view of their age. At the same time, political theories also influence political development. Not only are they the outgrowth of actual conditions, but they, in turn, lead men to modify their political institutions. Sometimes theory has preceded, sometimes it has followed, the corresponding institution or activity. Political theories are thus both cause and effect. Changing conditions create new theories ; these in turn influence actual political methods.

Political theory is connected not only with the political institutions of its time, but also with thought in other lines. Political thought cannot be separated from science, philosophy, ethics, religion, economic theory, and literature, or even from tradition, dogma, prejudice, and superstition. The nature of political thought depends largely on the stage of intellectual development. At one period men's intellectual interests place emphasis on one phase ; at another, upon a different phase. Accordingly, the historical survey of political thought must keep in mind not only the actual development of political institutions, but also the parallel progress of human thought in other fields, in order that the political principles of any given

time may be understood and appreciated. There are, therefore, two phases in the evolution of the state. One is the objective, concrete development of states as manifested in their governments, their administration of law, and their international relations ; the other is the subjective development of ideas concerning the state as an abstraction. In political theory, as in actual political organization, a continuous growth may be traced. Political principles, like devices of government, are handed down from age to age, each state, by its experience and in the light of its conditions, modifying former concepts, and these in turn influencing the states that follow.

It remains to add that political thought is essentially relative in its nature and cannot lay claim to absolute and final solutions. Political thinking is seldom unanimous concerning the problems of its time. Intelligent men differ honestly in their opinions concerning the nature of political conditions, their causes, and the proper methods of solution. Many such differences of opinion underlie political issues, create political parties and their contests, and form the motive forces of government. Many others are involved in the international policies of states, and lead to disputes or to warfare in which both parties to the conflict are honestly convinced of the justice of their cause. There are times when the clash of political issues is mild, when men and states agree fairly well on fundamental questions, and when governmental and international relations run smoothly and effectively. At other times differences of opinions are sharp, parties assume hostile attitudes, revolution is in the air, and international relations are strained or openly hostile.

Conservative and Radical Political Thought. Since political thought usually aims either to support or to attack existing political institutions and methods, it may be classified broadly as either conservative or radical. Theories of the conservative type arise from the attempts of men to explain and justify the political system under which they live and to maintain it against change. Such theories are usually created or supported by the class in power and by those who benefit under the existing régime. They also represent the natural mental attitude of those who love law and order and

dislike confusion and disturbance. The best example of this type of theory is the doctrine of divine right, by which the religious authority of the church was added to the political authority of the state, a supernatural sanction was given to law, and the position of rulers was made sacred and inviolable. This theory, which made resistance to the powers that be a sin as well as a crime, was mutually advantageous to the officials of the state and to the leaders of the church, and appeared frequently in the history of political thought as the support of autocratic authority and the opponent of reform. Milder forms of conservative theory were represented in the laudation of the British system of government in the eighteenth century and in the general praise accorded to the American constitution during the nineteenth century. By establishing a widespread belief in the perfection of existing institutions, such ideas made change more difficult. Similarly, political policies may be crystallized into dogmas or shibboleths, and receive unthinking support because, by constant repetition, they become embedded in the national tradition. Those who hold conservative theories view changing conditions with emotions ranging from regret to alarm. When their theory no longer corresponds with actual conditions, they picture a golden age in the past, and long to return to the good old days. In this form conservative theories become reactionary, often dying hard in their last efforts to resist inevitable change.

Radical theories arise in opposition to the *status quo* and support efforts to change existing political institutions and methods. Such theories range from philosophical and imaginative utopias that have little apparent connection with actual life, and no likelihood of practical application, to the concrete ideals of reformers who are aiming to remedy certain evils or to accomplish desired reconstruction. These latter vary from attempts to change some single device of organization, or to make minor readjustments in governmental activities, to wide-sweeping schemes of political reorganization or the creation of new political systems. Some of their advocates are willing to work slowly and through legal channels; others believe in immediate and revolutionary methods. Such theories are usually held by those who are not in power, who

are not happy and prosperous under the existing system, and who hope to better their condition by change. It is obvious that radical theories could not arise and be widespread until men had reached a considerable degree of political intelligence and were permitted freedom of thought and discussion. Such doctrines are dangerous to the powers that be, and during the greater part of human history have been forbidden and suppressed. An important example of radical political thought was the doctrine of social contract and natural rights that served as the basis for the English Revolution of the seventeenth century and the French and American Revolutions of the eighteenth century. It attacked the divine right of kings and justified revolution and popular sovereignty. Modern socialist doctrines furnish other examples of radical theory.

It is interesting to observe that when a radical theory is generally accepted and becomes successful in practice, it tends to become a conservative theory, making certain concessions to practical necessity but endeavoring to maintain what it has accomplished and to prevent further change. Thus the doctrine of natural rights, with its emphasis on individualism and on the safeguarding of personal and property rights, was a radical theory in the eighteenth century, attacking the autocratic and paternalistic governments of that day. At present the theory is used as a conservative support for vested interests, in an effort to prevent the extension of state regulation and control that the socialists demand. Both conservative and radical theories have points of strength and weakness. Conservative theories, valuable in maintaining public peace and stability, frequently prevent or delay needed reform. Radical theories, necessary to prevent stagnation and to stimulate political progress, frequently represent the panaccas of ignorant fanatics or lead to political chaos and anarchy. The proper compromise in political thought between undesirable extremes of conservatism and radicalism is difficult to maintain, and a swing too far in one direction is likely to be followed by a reaction toward the other extreme.

Sources of Political Theory. Knowledge concerning the political thought of the past may be drawn from many sources. The chief contribution was made by those political philoso-

phers who attempted to put into systematic form the political thought of their times. This includes a long list of conspicuous thinkers from Plato to the present. Some devoted their attention exclusively to political doctrines ; others dealt with the state incidentally, as a part of their larger interest in philosophy as a whole. The writings of these men not only crystallized the thought of those who preceded them and of their contemporaries, but also frequently marked out new lines of theory that secured acceptance later. The chief objection to depending exclusively upon this source is that it gives a history of political literature rather than of political thought. Political philosophers are often too much removed from practical life or too close to their own institutions to get a proper perspective, or too much influenced by past doctrines or by personal bias or prejudice to give a true picture of the political thought of their day. This source must therefore be supplemented by others.

Much political theory is never put into definite statement. It is found tacitly underlying the form of actual organization and of political practices. It is taken for granted or sometimes deliberately suppressed. The history of political institutions and of the actions and policies of states occasionally shows more clearly than words the actual principles that dominated men's minds. Quite often in political doctrines, as in other phases of human endeavour, a wide discrepancy is found between the principles professed and those that are acted upon. The political theory of the Middle Ages, with its belief in the continued existence of world unity in the Holy Roman Empire, was in striking contradiction to the fragmentary and decentralized nature of the feudal states then existing. And many motives that are influential in practical politics today are seldom put into party platforms or into campaign orations.

A considerable amount of information concerning the theory of the state may be derived from the writings and speeches of men who occupy official positions in government or who exercise leadership in public opinion. Such material, while often colored for public consumption, nevertheless reveals, sometimes quite unintentionally, important political principles. It has both the merits and the defects that result

from being in close contact with the realities of political life. The official documents of states furnish a most valuable source of political thought. These include written constitutions. statutes and ordinances, court decisions, charters, departmental reports, treaties, diplomatic correspondence, and the like. While these must be supplemented by observation of the actual practices of states, with which they do not always correspond, they are nevertheless an important guide to political theory.

In former times political thinking was limited to a comparatively small part of the population. The masses were ignorant and indifferent or suppressed.[1] More recently public opinion has come to play an important part in political thought and to exert a powerful influence on government. Accordingly, methods have been devised to influence it or to give it means of expression. Newspapers, magazines, pamphlets, posters, cartoons, and other forms of publicity and propaganda have thus become important sources of political theory. Finally, literature, in its narrower sense, often deals, directly or indirectly, with political life and problems. This is especially true of the essay, poetry, fiction, and the drama. Because they are less self-conscious and less partisan than the writings of political publicists, the truest pictures of the political thought of a period may often be drawn from such sources.

Problems of Political Theory. If an analysis be made of the questions with which political theory has been concerned, it is found that emphasis has been placed at various periods upon widely different types of problems. The Greek thinkers were interested in the ethical basis of politics, and gave attention to the nature of justice and to the best form of government. In the medieval period, controversy centered in the contest for supremacy between spiritual and temporal authorities, and political theory was closely associated with theology. In the seventeenth and eighteenth centuries the dominant interest was in the contest between monarchic and democratic theories of political organization. At present the extent of state activities has come into prominence, and the connec-

[1] H. O. Taylor, *Freedom of the Mind in History*.

tion between political and economic interests is especially close.

Considerable attention has been given to the origin of the state. In the uncritical past, when historical knowledge was slight, the state was usually viewed as established by the authority of God, or as the result of the "political nature" of man, or as a deliberate creation by means of the voluntary agreement of individuals, or as the outcome of the forced subjection of the weak to the strong. Even now our knowledge of the early period of political life is incomplete, and many important points are in dispute. In general, however, the modern evolutionary theory views the state neither as divinely created nor as the deliberate work of man through either conquest or agreement. It sees the state coming into existence gradually as the natural result of many and diverse forces resulting from the need of men for order and protection.

Ideas concerning the proper size of the state have undergone marked changes. The Greeks considered the city to be the desirable type. After the establishment of the Roman Empire, the ideal of a world state dominated men's minds for centuries. In modern times the national state has been considered natural, although somewhat modified by the imperialistic conception of colonial empire. In recent years the ideal of world federation has appealed to many.

Many thinkers have given attention to the nature of the state and to the source and rational justification of its authority. The anarchist finds no justification for the existence of coercive authority and would abolish the state completely. Most writers justify the state, either as a necessary evil or as a desirable thing in itself. The bases of their justification show wide variation. Some have viewed the state as divinely ordained; others have considered it the result of the innate political character of man. Some have justified the state because of its obvious utility, holding that obedience to the state secures the greatest happiness of the greatest number. Others have rested its authority on the consent involved in the assumed compact by which the body politic was created. Still others have personified the state, either as a legal person or as a real

and living organism which represents the highest stage in the process of social evolution. Many writers have found an ethical basis for the state, and have considered political life essential to the highest development of human personality.

For several centuries political theory has been dominated by the idea of sovereignty. The rise of national monarchies was accompanied by the theory that in each state there was a sovereign and independent authority. The state was personified in the ruler, and its essential relationship was considered to be that between sovereign and subject. The king was the sovereign, the ultimate source of all political power. Attacks on royal prerogative led to the theory of popular sovereignty, attributing final authority to the general will of the entire body of citizens. The concept of sovereignty was associated with the state as a legal person rather than with the ruler as an individual. The indefinite nature of popular sovereignty led, during the nineteenth century, to elaborate attempts to locate sovereignty in various organs of government, usually the legislature or the constitution-amending body. Bitter controversy was waged over the location of sovereignty in a federally organized state. More recently the concept of the absolute, supreme, and indivisible sovereignty of the state has been attacked, both because of the existence of organizations within the state which seem to have a juristic life and authority of their own, and because, in the relations among states, the theory of the equality and independence of the state conflicts with actual inequalities and with various degrees of dependence. Some writers believe that the concept of sovereignty has outlived its usefulness ; others argue for a number of sovereignties, denying the supremacy and omnipotence of the state over other social organizations.

The conception of law has undergone various transformations. Originating as custom, supported by immemorial tradition and the prevailing belief in divine sanction, law was later considered as existing in nature, to be discovered and applied by human reason. When strong monarchies were established, the will of the sovereign became the source of law. Finally, modern democracies have attained to the idea that law, as the will of the state, should be formulated and administered by

popular governmental organs, and should be modified as occasion demands new rules to meet new social needs.

What form of government is best has been a source of endless controversy in political theory. Whether political power should be centered in a single head, or limited to an aristocratic few, or widely distributed among the democratic masses has been much discussed. The Greeks favored aristocracy ; after the formation of the Roman Empire it was generally held that monarchy was most desirable ; in recent years democracy has been generally supported. Many thinkers have tried to establish the normal cycle in which these different forms appear and succeed one another, and the causes and nature of the revolutions that periodically disturb states. The theory of representation also has undergone changes. At first the social classes —nobility, clergy, and commoners—sent their delegates. The idea of human equality and popular sovereignty led to the representation of territorial-population groups, approximately equal in numbers. The present importance of economic organizations within the state has given rise to various theories that favor the representation of occupational groups.

Wide differences of opinion have arisen over the proper scope of state activities. At one extreme is found an individualism that would limit the state to the narrowest exercise of authority and leave to its individual citizens the widest possible sphere of free action. At the other extreme is a paternalistic socialism that would extend state action to the widest limits and subject the individual to extensive governmental control and regulation. Between these extremes all shades of opinion are found. Certain activities are recognized by all as essential to state existence, but over a wide range of optional functions a great controversy is waged. Those who glorify the state and view it as a desirable end in itself are willing to intrust it with large powers ; those who view the state as a dangerous necessity emphasize, rather, the importance of individual freedom.

A considerable section of political thought has been devoted to the relations among states. At first states held the belief that they owed no obligations to any except peoples of their own race and religion. Strangers were enemies and had no

rights ; hence the existence of principles to regulate the relations among states was not admitted. After the establishment of the Roman Empire the ideal of world unity and of supreme authority vested in Emperor or Pope prevented for centuries the rise of a sound theory of international relations. The rise of modern national states, with increasing diplomatic and commercial intercourse and the waging of international warfare, gradually developed the customs and principles of international law. Peace under generally accepted rules, rather than unregulated war, came to be considered the normal relation among states, and the concept of a family of nations engaged in constant intercourse under recognized regulations was generally accepted. The idea of law was widened to include relations not only among individuals but among states as well, and peaceful and legal methods were devised for the settlement of international differences. Much present-day thought is devoted to the effort to improve the external relations of states.

Theories of the Nature of the State. Much attention has been given by writers on political theory to the nature of the state ; and from their different conceptions of its nature divergent conclusions have been drawn concerning its proper sphere and purpose. The most important attempts to answer the question of what the state is are the following :

1. *The juristic theory.* This theory, put forward mainly by jurists, regards the state from an abstract point of view as an entity or concept of legal thought. It views the state as a legal person existing for the creation and enforcement of law and the protection of legal rights. From this point of view the state is the people politically organized into a sovereign corporation, with a collective will of its own and with rights and interests apart from those of the individuals that compose it. Like other corporations, the state is a permanent and enduring association, concerned with the interests of future generations as well as with those of the persons existing at any given time. According to this theory the qualities that belong to natural persons are, by a fiction of law, attributed to the state. While some jurists push this conception of the state to the extreme of considering it a real person, the majority are

agreed in viewing the state only as a juridical person.[1] In law the possessor of legal rights and duties is viewed as a person, and in this sense the state is envisaged by the jurist as possessing legal personality. States own property, direct economic enterprises, appear as plantiffs in civil and criminal cases, and permit themselves to be sued in the courts in certain matters. The state differs, however, from other artificial persons in that its legal authority is supreme and is inherent, not derived from the legal will of any other legal person.

2. *The organismic theory.* In contrast to the juristic theory, which views the personality of the state only as a legal fiction or mental concept, the organismic theory conceives the state to be a living organism, like plants and animals possessing organs which perform specialized functions, and, like them, subject to the laws of development and decay. Individuals, whose existence is merged in that of the state, are the basic cells of which the organism is composed, each dependent on the others and on the whole for its continued existence. Like other natural organisms, the state develops in its environment, its organs becoming more distinct and definite, and at the same time more closely interrelated. It is a social organism so unified that its individual members have no real independence. The organismic theory is a biological conception which describes the state in terms of natural science and which draws elaborate and ingenious analogies between the state and living beings.

Comparisons between the state and human beings were drawn by many early writers. Plato saw a resemblance between the functions of the state and those of an individual. Cicero likened the head of the state to the spirit that rules the human body. The analogy was popular with medieval writers, both church and state being viewed as organic unities, similar to living creatures. Hobbes characterized the state as "that great Leviathan which is but an artificial man, though of greater strength and stature than the natural," and compared the weaknesses of the state to human diseases. Rousseau called the legislative power the heart of the state, and the executive power its brain. In the early part of the nineteenth century

[1] W. W. Willoughby, *Fundamental Concepts of Public Law*, Chap. IV.

a great impetus was given to the organic point of view by the rise of the concept of evolution and by the reaction against the eighteenth-century theory of social contract, which made the state a deliberate and artificial creation of men. Many writers, especially in Germany, pushed the biologic analogy to absurd extremes, tracing identity even in the detailed functions of political and biological life [1]

The organismic theory has a certain value in emphasizing the unity of the state, the interdependence of the individuals that compose it, and the gradual and continuous evolution of its historical growth. In this respect it was a useful antidote to the eighteenth-century theory that viewed the state as a mechanical and artificial creation of man which could be remade at his pleasure, regardless of history and tradition. The state, however, is not in reality a living organism, and even the analogy is open to serious objections. The resemblance between individuals and the cells of a living organism is exceedingly superficial. Individuals have a separate physical life, with wills of their own, and with many interests and activities unregulated by the state. The cells of an organism have no independent life, no power of thought and will, and no purpose except to support and perpetuate the life of the whole. A living cell cannot be a part of two distinct organisms at the same time, but an individual member of the state may also be a member of many other associations. All natural organisms owe their origin to preëxisting organisms, deriving from them their life and characteristics. The life of the state comes from within ; its origin cannot be compared to the procreative process through which living beings come into existence. Moreover, decline and death are inseparable from the life of an organism, though they are not necessary processes in state life. Finally, the organism grows unconsciously, independent of volition, entirely dependent upon its environment and the natural laws of the biologic world. Its parts have no power to direct its growth or add to its stature. The state, on the contrary, changes rather than grows ; and, while influenced by external conditions, reaches a point in its deve-

[1] J. K. Bluntschli, *Lehre vom modernen Staat* ; H. Spencer, *Principles of Sociology* ; A. Schäffle, *Bau und Leben des socialen Körpers.*

lopment where this change takes place largely as the result of the conscious action of its individual members.

Moreover, this theory throws little light on the practical question of what the state should do. In emphasizing the fact that the state results from natural growth, it can scarcely mean that men in the state are to take merely a passive part in the process. In fact, this theory has been used to support views on state functions ranging from individualism to socialism. According to Herbert Spencer government has been evolved for the purpose of maintaining peace and order and of giving protection to its citizens, and it should, like other organs, limit its activities to those particular functions for which it arose. According to many German writers, Bluntschli for instance, the state, as the highest organism, is the important unit and collective activity is the ideal of social progress. These writers use the theory as the basis of an argument that would magnify the state and sacrifice the individual to society. While the life of the state and the life of an individual show certain resemblances, the organismic theory is neither a satisfactory explanation of the nature of the state nor a trustworthy guide to state activity.

3. *The contract theory*. The theory that men lived originally in a prepolitical state of nature, and that by voluntary agreement, or contract, they deliberately created a political association, was used not only as an explanation of the origin of the state[1] but also as a theory of the nature of the state and the relation of those who govern to those who are governed. This theory had its origin in Greek philosophy at the time when the independent Greek city states were being overthrown by Macedonian and Roman conquest With the loss of civic independence the Greeks were forced to seek a field of activity outside the state, and their philosophy became concerned with the means by which the individual might secure happiness rather than with civic welfare. The Sophists taught that the state was the result of a voluntary agreement among men ; that it was a barrier to self-realization and therefore opposed to nature. The Epicurean school taught that the state rested upon individual self-interest, and defined law as an agreement

[1]See above, Chap. VI, pp. 73-74.

of utility entered into among individuals in order that they might be secured against violence and injustice. The theory that the state rested upon the deliberate agreement of men was here foreshadowed. Later the system of Roman law, with its clear and elaborate development of the conception of obligation by contract, supplied further material for the theory.

A modification of the theory was concerned not so much with the origin of the state as with the source of the power of its ruler. This took the form of the governmental contract, according to which the authority of rulers rested upon an original contract with their subjects. This theory was held by the Roman jurists, who based the power of the Emperor upon the consent of the Roman people. The Old Testament refers to a covenant made before the Lord by King David and the Elders of Israel.[1] The feudal system was saturated with the idea of contract and contained many examples of agreements entered into between rulers and subjects. The idea of natural law, emphasized by the Stoic philosophy, was incorporated into the philosophy of the churchmen and, often identified with divine law, was viewed as superior to any human enactment.

In the fifteenth century the Conciliar movement in the church, which aimed to replace the authority of the Pope by that of a church council, revived the concepts of natural rights, social contract, and popular consent.[2] Although this movement failed, the principles then put forward were used later in the contest between king and people and in the effort to replace the power of kings by that of representative parliaments. In opposition to the theory of divine right, put forward by the royalists, the revolutionary thinkers of the seventeenth and eighteenth centuries used the social-contract theory to support popular sovereignty, individual freedom, and the right of revolution. In the writings of Hobbes,[3] Locke,[4] and Rousseau,[5] these ideas found their chief expression ; and in the Civil War

[1] 2 Samuel v, 3.
[2] In the writings of Æneas Silvius, Nicholas of Cues, and others.
[3] *The Leviathan* (1651).
[4] *Two Treatises of Government* (1690).
[5] *The Social Contract* (1762).

in England, the French Revolution, and the American Revolution they were applied in practice.

The leading expounders of this theory differed in their conceptions of the state of nature and of the effect of the contract on those who made it and on the authority created by it. Hobbes viewed man as naturally brutal and selfish, and the state of nature as one of aggression and war. In it there was no law, no justice, and no property, since these are the creations of the state. Physical power alone limited the rights of men in the state of nature. To escape the fear and danger of this condition, men agreed to submit themselves to a common authority. Locke believed that men were naturally sociable and peaceable, and that the state of nature was one of equality and freedom. It was not lawless, since men were bound by the law of nature and possessed natural rights. Because of the difficulty of interpreting and enforcing natural law, since each man was judge and executioner in his own case, men agreed to give up some of their natural rights to a common authority. By Rousseau the state of nature was conceived as a condition of ideal happiness, only abandoned because growing population and advancing civilization brought evils. Men were thus compelled to form a social contract by which each merged his natural rights into a common authority or general will.

As to the result of the contract and the nature of the authority created by it, Hobbes held that each individual agreed with all the others to give up his right to govern himself and to submit to a common authority. By this process the state was created, and the authority upon which the power to govern was bestowed became the sovereign. The contract once made, the authority of the sovereign was absolute. Since he was not a party to the contract, he was not bound by it, nor could the people withdraw rights which they had irrevocably transferred. Hobbes wrote to uphold the absolute authority of the Stuart kings in England, and used the social-contract theory to reconcile absolute monarchy with the growing belief that ultimate political power was derived from the people. His chief defect was the failure to distinguish between state and government. He did not realize that the form of government may be changed without destroying the state, and that the existence of sovere-

ign power does not necessarily mean the absolute authority of the particular persons who exercise it.

Locke differed from Hobbes in several respects. He held that the surrender of rights was to the community and not to any particular man or group of men. The people, therefore, remained sovereign, and the ruler was a party to the contract and was bound by its terms. If rulers failed to maintain those individual rights for whose protection they had been established, the contract was dissolved, and the people, resuming their original liberty, might set up a new government. Locke wrote to uphold the Revolution of 1688, by which a king was deposed and a new king created, and his doctrine was made the basis of a limited monarchy and justified the right of revolution. His chief contribution was his recognition of the limited powers of government and of the democratic basis of political power. He failed, however, to see that revolution, however desirable, is never legal.

Rousseau viewed the social contract as a process by which each man merged his natural rights into a common authority, or general will. What he lost was his natural liberty ; what he gained was civil liberty. To this agreement the government was not a party. Final authority always remained in the hands of the people, and their sovereign power was unlimited. The government was merely the agent to carry out the general will. Rousseau even considered representative government undesirable, and preferred the direct control of the people in a mass meeting or general assembly. This theory clearly distinguished state and government, and pointed out the delegated authority of the latter. It supported popular sovereignty in its most extreme form. However, it practically destroyed the legal nature of authority by making it identical with public opinion and by placing the permanence and sanction of government at the mercy of a rather indefinite general will.

In spite of the great value of the social-contract theory in serving as the basis for modern democracy, and in spite of its elements of truth in emphasizing the importance of the individual, the possibility of modifying political institutions by deliberate human effort, and the fact that ultimate political authority lies, at least potentially, in the mass of the people,

the theory is not a satisfactory explanation of the nature of the state. Historically, the theory is absurd in supposing that people in the earliest stages of civilization, without previous experience in government, should deliberately agree to form a political organization. Even as a rational attempt to explain the nature of the state and the source of governing authority, the theory is faulty. A contract is a voluntary relation which individuals may enter into or not, as they choose. The relation of the individual to the state, however, is not a voluntary one, since man is born into the state and cannot avoid its obligations or withdraw from its control. Furthermore, a contract is binding only upon the original parties who make it, and not upon their successors, who have never given adherence to it. In that case the state would expire with the death of the original contractors and would have to be renewed by their successors. The social-contract theory tends to reduce the state to the level of a joint-stock company—an artificial creation rather than the product of historical growth and of social necessity.

Besides, the original contract could have no legal force. A contract implies the previous existence of a legal authority which can enforce it. Since no political organization existed to define or enforce contract rights, the original agreement by which the state was formed would not be legally binding, and all rights based upon it would be without legal basis. Finally, the conception of natural "laws" and "rights" is fallacious. A right is a privilege implying corresponding obligations on the part of others, and is possible only in case some authority exists to maintain the right and enforce the obligations. In a state of nature man would possess only powers or "mights," and his natural "rights" would constantly conflict with those of others, thus destroying the "rights" of all. It was, then, not until a definite political authority existed, strong enough to compel every individual to refrain from interference with others, that rights in any real sense came into being. No law or rights, except in a purely ethical sense, existed before the state arose.

4. *The idealistic theory.* This theory, which is philosophical in nature, had its origin in the doctrine of Plato and Aristotle

that in the state alone is the individual able to live a good life and realize the highest ends of his existence. From this principle was developed, especially in Germany,[1] a philosophy that idealized and glorified the state, regarded it as an end in itself, rather than as a means, and viewed it as all-powerful. This theory taught that the state can do no wrong and that its commands must be obeyed without question. Its needs and interests are supreme over the needs and interests of its citizens, and revolt against its authority is never justifiable. It views the state as a mystical entity, separate from and superior to the persons who compose it. It has its own will and interests and its own standard of morality, distinct from that of the individuals who compose it. It is the only real source of civilization and progress. As developed by certain recent writers,[2] this theory argued that the state is power, that war is desirable and necessary, and that the state is bound by no rules that will prevent its strength and expansion. No limits can be set to the sphere of state action, and superior civilizations have a duty to extend their culture over weaker and inferior peoples.

Viewed as an idealized conception of what the state should be, this theory has certain value in pointing out the necessity of the state to civilization and progress and the desirability of loyalty and sometimes of sacrifice on the part of citizens. It also emphasizes the fact that the state is the only source of law and rights, and that the essence of its control is, in the last resort, power. The theory is dangerous, however, if pushed to the extreme of viewing the state as above all moral restraints, and of submerging the individual wholly to unquestioning obedience. The doctrine that the state is omnipotent, that it is an end in itself, and that its interests are distinct from those of its citizens contains elements of danger. When the theory is used to deify the state, justify war and conquest, and uphold a brutal and aggressive attitude, it becomes wholly pernicious.

Value of Political Theory. It is sometimes urged that political theory, like all speculative thought, ignores reality, cannot be applied in practice, and utilizes legal fictions and

[1] Hegel, *Philosophy of the State and History*, trans. by Morris.
[2] Nietzsche, *Zarathustra*; Treitschke, *Politics*; Bernhardi, *World Power or Downfall*.

absolute concepts which are untrue and dangerous. The theorist in politics is often viewed as an impractical visionary, and interest in theories is frequently held to be the sign of a badly governed state or of an approaching revolution. It is true that theories that have outlived their usefulness have often stood in the way of progress, and that the fanatical ideas of ill-informed and unbalanced zealots have worked confusion. At the same time, revolutions furthered by political principles have often been of great benefit to mankind, and progress toward democracy, individual freedom, and international justice owes much to the doctrines of able thinkers.

Political speculation may justly lay claim to certain values. It examines the meanings behind political terms and is conducive to clarity and honesty of thought. It aids in interpreting history, explaining the motives underlying important political movements. In so far as the events of the past were shaped by human will, it is necessary to understand what men believed and what they hoped for. And as the problems of the present have grown up out of conditions in the past, the political principles now being applied are the result of the evolution of past political thought. As soon as man becomes conscious of his political existence a theory of some sort will underlie his political actions. Every deliberate readjustment of governmental organization and every policy of governmental action will be based on some general principle. Any successful attempt at constructive political progress must rest upon a sound and comprehensive political theory, applicable to present-day conditions and needs.

Finally, political theory represents a high type of intellectual achievement and, like other forms of philosophic thought, has an interest and a value entirely apart from any practical application of its principles. Intelligent men naturally wish to understand the authority under which they live, to analyze its organization and activities, and to speculate concerning the best forms of political existence. The fact that many of the greatest thinkers of all time —Plato, Aristotle, Aquinas, Locke, Rousseau, Kant, Mill, and others—were concerned with the political aspects of philosophy is an indication of its importance as a form of intellectual effort. If political evolution

were an inevitable growth in which the deliberate purposes of man have little part, political theory would have merely an intellectual and academic value. If, however, men, by taking thought, can make themselves the masters of their social destiny, then political theory has much to contribute to human progress.

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CHAPTER IX

SOVEREIGNTY

OUTLINE

Nature of Sovereignty. The relation of state to state, of a state to its citizens, and of one citizen to another can be understood only after a further discussion of that characteristic which distinguishes the state from all other organizations, its sovereignty. Such discussion leads naturally to the corollary of state sovereignty, namely, individual liberty. At first sight these seem mutually contradictory, but further analysis will show their proper relation. Another topic to be considered is the nature of law, since in that form the sovereignty of the

state manifests itself. These topics, therefore, will be discussed in the following chapters.[1]

The concept of sovereignty is the basis of modern political science. It underlies the validity of all law and determines all international relations. It may be briefly outlined as follows. The state comes into being when an independent group of people are organized by means of a government which creates and enforces laws. Within this group there must be supremacy of will and power. It must contain some person or body of persons whose commands receive obedience and who can, if necessary, execute those commands by means of force. Such person or body of persons exercises sovereignty, and such commands are called laws. Evidently there can be no legal limit to sovereignty, since that would imply a higher lawmaking body, and that in turn would be the sovereign. Such a body cannot legally limit itself, since such limitations could be removed at its pleasure. The state, therefore, is legally sovereign. There can be no legal limit to the lawmaking power of the supreme lawmaking association,

Since sovereignty is a legal concept, the facts set forth above result inevitably from the definition of the state. Other associations may formulate opinions and lay down rules, but it is the peculiar charcteristic of the state that its will overrides, in case of conflict, all other wills, either of persons or of associations within it. Its law is the final word on such matters as it chooses to bring under its control. While possessing unlimited legal power, the state usually exercises but a small part of its authority. It grants certain rights and privileges to individuals, and it voluntarily sets bound to its own activities. All these have, however, no legal force against the state, since it may change or destroy them at its will. There have always been certain activities which the state has permitted freely to individuals, not because the state could not interfere, but because it did not deem it expedient to. A state may grant a large measure of autonomy to its colonies or may give extensive powers to its local divisions, and still retain sovereignty if it can legally withdraw these delegated powers at any time.

[1]See Chapters X, XI.

A distinction is usually made between internal and external sovereignty. Writers, especially in international law, speak sometimes of internal sovereignty as the power to make and enforce law over all persons in the territory of a state, and of external sovereignty as the power to carry on relations with other states, including the power to declare war and make peace. This conception of external sovereignty is objectionable because it implies that a state possesses sovereign powers in the territory of other states, which is not true. By other writers external sovereignty is viewed as the freedom of the state from subjection or control by another state. Treaties or the rules of international law by which states agree to certain limitations on their complete freedom of action do not destroy their sovereignty, since there is no superior legal compelling authority to enforce them. If a state is internally sovereign, it must of necessity be legally independent externally. Sovereignty, properly speaking, deals with the internal relations of a state to its inhabitants ; it is a term of constitutional law rather than of international law. It is a legal concept and deals with positive law only. It would be conducive to clearness of thought and would avert much controversy if the term "sovereignty" were applied only to what is usually called internal sovereignty, and the term "independence" were used for what is sometimes called external sovereignty. What is called external sovereignty is in reality the totality of rights by which internal sovereignty manifests itself in its dealings with foreign states.

In the last analysis, sovereignty rests upon either force or consent, or a combination of force and consent. Men obey because they must or because they agree that it is desirable to do so. In despotic states authority rests upon force or the threat of force. Men obey through fear, either of bodily punishment or of the divine wrath of the gods, whose authority is believed to support the power of the rulers. In democratic states the majority of men obey through consent, since they believe that the government is created by themselves and that the laws represent the general will of the people. Force is necessary only for the few who refuse to obey. For this purpose the state maintains a police force to coerce the criminal, and a military force to put down riots or rebellions if a con-

siderable number refuse to give voluntary obedience. Even consent, therefore, implies the existence of potential force, since the mass who agree are usually in a position to coerce, if necessary, those who refuse to give consent.[1] If an internal issue is put to the test of force, civil war follows, and the successful outcome of this contest, resulting from the superior force of one party, will decide the disputed question. It is this possession of force to support its commands and to compel obedience that distinguishes the state from all other associations and that makes it sovereign. In a well-organized state the use of force is seldom needed. Intelligent recognition of common interests creates a feeling of unity, and laws represent a general consensus of opinion. When, however, disputes among states arise that cannot be settled by agreement, the nature of the state as organized force immediately becomes apparent, and the issue, in case of war, is decided by the superior force of the victorious state.

Characteristics of Sovereignty. The characteristics of sovereignty may be summarized as follows :

1. *Absoluteness*. There can be no legal power within the state superior to it, and there can be no legal limit to the supreme law-making power of the state.

2. *Universality*. The sovereignty of the state extends over every person and every association of persons in the state. The apparent exception in the case of diplomatic representatives is an international courtesy which the state may at any time remove.

3. *Permanence*. The sovereignty of the state continues as long as the state itself exists. Those who exercise it may change, and the whole state may be reorganized ; but sovereignty, wherever located, persists. Only by the destruction of the state itself can sovereignty be destroyed.

4. *Indivisibility*. There can be but one sovereignty in a state. To divide sovereignty is to destroy it. The exercise of its powers may be distributed among various governmental organs, but sovereignty is a unit, just as the state is a unit. There

[1] G.H. Sabine, "The Concept of the State as Power," in the *Philosophical* [illegible], July, 1920.

must be as many states as there are sovereignties. A divided sovereignty is a contradiction in terms.

The theory of the indivisibility of sovereignty has been attacked from various points of view. Writers on international law speak of part-sovereign states, such as protectorates, but they are concerned with the external aspects of sovereignty, where the independence of states is a relative matter and may be more or less complete. In the years following the adoption of the Constitution of the United States the theory of divided sovereignty was held by most American thinkers. In order to explain the nature of the new Federal system and to avoid the necessity of settling the issue of whether sovereignty was left to the former states or transferred to the new union, most writers adopted the theory of a dual sovereignty. They viewed the United States as sovereign as to the powers conferred upon the national government, and the states as sovereign as to those powers reserved to them.[1] The nation was sovereign in its sphere, and the states were sovereign in theirs. This theory was revived by German writers at the time of the formation of the German Empire, but it has now been generally abandoned. What is divided in a federal system is not sovereignty, which resides as a unit in the state as a whole, but the exercise of its various powers, which are distributed in accordance with a constitutional system among various governmental organs.[2]

More recently the theory of divided sovereignty has been revived by the pluralists,[3] who deny that the state alone is sovereign and who hold that other associations in the state, such as churches or economic groups, are sovereign over their particular interests. This would divide sovereignty into fragments and distribute it among the state and other associations. The result would disintegrate the state, and would probably lead in the end to confusion and anarchy, or to a reorganization of a new unified sovereignty, since a final authority must lie somewhere.

[1] See decision of the Supreme Court in *Chisholm* v. *Georgia* (1972), 2 *Dallas*, 435.

[2] On the nature of a federation, see below, Chap. XIV.

[3] See below, pp. 144-146.

Development of the Idea of Sovereignty. While the term "sovereignty" was not used until the fifteenth century, the idea can be traced back to Aristotle, who wrote of the "supreme power" of the state. Roman lawyers and medieval writers spoke of the "fullness of power" of the state. Ancient and medieval writers, however, had a somewhat vague and confused idea of the nature of sovereignty. In the Middle Ages the state in the modern sense did not exist. Feudalism was a gevernmental system based on personal allegiance. Coexistent with feudalism were the antagonistic claims of church and Empire, leading to the much disputed question whether temporal or spiritual power was supreme. Further confusion was added by the general belief in a law of nature, to which all human law must conform. The belief that the Holy Roman Empire was universal and the claims of the Papacy to headship in temporal affairs prevented the existence of independent states. On the other hand, the divided authorities of feudalism and the belief in a law of God or of nature, superior to all human laws, made impossible the modern idea of the unlimited and indivisible sovereignty of the state over all its citizens. Such concepts of sovereignty as existed were a mingling of concepts of tribal allegiance and of universal empire. From the standpoint of the first, the king was lord of his people ; from that of the second, some authority must exist supreme over all kings.

Toward the end of the medieval period a number of causes combined to create new political ideas. The feudal nobles were weakened by the Crusades and by their own quarrels. Commerce and towns destroyed their monopoly of wealth ; new methods of warfare destroyed their military supremacy. Taking advantage of their weakness, the king increased his power and importance until he became supreme in the state. This process was aided by the old traditions of the Roman Empire and by the revived study of Roman law. Feudalism, by joining governing power with land-holding, had developed the idea of territorial sovereignty ; and as the intermediate authorities between king and people were removed, the state was unified, and the king stood forth as sovereign of his state. Later. as men began to realize that government was an agent

rather than a master, sovereignty was applied to the state itself instead of to the king.

It was the struggle between the rising national state and its various internal and external rivals—the feudal lords, the Papacy, and the Holy Roman Empire—that gave rise to the modern doctrine of sovereignty. This struggle assumed fiercest proportions in France, and French jurists came to the aid of their king with a legal theory to justify the unity of the state and the royal claim to supremacy. Jean Bodin,[1] in the sixteenth century, was the first writer to discuss at length the nature and characteristics of sovereignty. The state was recognized as supreme over all its citizens and free from external compulsion. Sovereignty was defined as the absolute and perpetual power of the state. Its chief function was the making of law, but the sovereign was not bound by the laws thus made. The idea of sovereignty was further developed by Hobbes,[2] who justified its absolute power on the basis of an original and irrevocable agreement of the people to surrender their natural rights to its authority. Rousseau[3] agreed that sovereignty was absolute and unlimited, although he located it in the general will of all the people, rather than in the ruler. Finally, in the writings of John Austin,[4] the legal theory of sovereignty received its most elaborate analysis. He held that in every state there must be a determinate body which possesses sovereign power, that its authority is indivisible and legally unlimited, and that its commands alone create law. The fundamental principles of this theory, though attacked by many writers, still serve as the basis for modern jurisprudence.[5]

Legal and Political Sovereignty. A distinction is sometimes made between legal and political sovereignty. The former represents sovereignty as supreme lawmaking power. The legal sovereign therefore, is that authority which is able to express in legal form the supreme commands of the state. It is always a part of the governmental organization of the

[1] *De Republica Libri Sex* (1576).
[2] *Leviathan* (1651).
[3] *Social Contract* (1762)
[4] *Lectures on Jurisprudence* (1832).
[5] F. E. M. Bullowa, *History of the Theory of Sovereignty.*

state, and no legal limitations restrict its power to express the state's will. The laws created by it are those which are recognized by the courts of the state. Behind the legal sovereign, however, in modern democracies, is the electorate which creates and to a large degree controls the legal sovereign. Still farther back are the vague and indeterminate influences which create public opinion and to which, in practice, the legal sovereign will usually conform. These form what is sometimes called the political sovereign. It is incapable of expressing its will in the form of a legal command, yet its will can usually be made to prevail.

In a direct democracy political and legal sovereignty would practically coincide ; the expression of political sovereignty would be equivalent to the creation of the supreme law. In modern representative democracies the concept of political sovereignty represents the view of the ordinary citizen who sees sovereignty residing in those persons who can make their will prevail in the state. The concept of legal sovereignty represents the juristic point of view, which requires a more definite conception and which knows no sovereign except that to whose commands the law attributes legal force. Where the will of the legal sovereign and the political sovereign conflict, the former takes precedence, since only those laws which have been enacted in legal form will be recognized by courts. If the political sovereign is unable to control the legal sovereign, it may either create a new and more subservient one by the legal process provided for this purpose, or it may, by revolution, illegally overthrow the existing legal sovereign and reorganize the state.

The problem of good government is largely one of the proper relation between the legal and the ultimate political sovereignty. The will of the legal sovereign should be the authorized manifestation of the will of the political sovereign ; that is, law should conform to public opinion properly expressed. Legal and political sovereignty should be different manifestations of the same sovereignty through different channels. While the student of political science must give attention to the influences that create political sovereignty and to its relation to the legal sovereign, nevertheless it is the latter which, for

purposes of scientific analysis, must be viewed as exercising the sovereignty of the state. It is unfortunate that the same term, "sovereignty" should be applied to two forces so radically different. It seems preferable to limit the term "sovereignty" to its purely legal application and to call the extra-legal forces behind it "public opinion" or "general will."

Location of Sovereignty. One of the most difficult questions in political theory is that of the location of sovereignty in the state. Granted that sovereignty is the essence of the state, that it implies the external independence of the state from other states, and that it involves the legal supremacy of the state over the persons composing it, the question still remains. What person or body of persons within the state ultimately expresses the state's will and enforces the state's authority? In other words, where within the state, is its sovereignty located? Various solutions to this vexing problem have been offered.

1. *Sovereignty of the monarch.* Originally sovereignty was viewed as an attribute, not of the state, but of the king. It was natural that sixteenth-century writers should identify the sovereignty of the state with the power of the monarch, since the struggle that gave rise to the conception of sovereignty was carried on by the king in order to establish his personal independence and supremacy. As he triumphed over his rivals in the struggle, sovereignty was ascribed to him. The king was the sovereign and could even say, "I am the state." This theory made the king the source of all law and authority; he could do no wrong; passive obedience must be given by all subjects. This theory was destroyed by the revolution that created modern democracies; but its traces survive in the use of the term "sovereign," in a nominal sense, to refer to kings (as in England) who have become, in fact, comparatively unimportant parts of the government.

2. *Sovereignty of the people.* The theory that sovereignty resides in the people was put forward in general terms by writers in the early Roman Empire. Influenced by Stoic doctrines of natural law and human equality, Cicero taught that ultimate political authority lay in the people of the state as a whole. Though traces of this doctrine survived, it was generally superseded in the Roman Empire by the principle that

"the will of the Emperor has the force of law," and later by the belief that the ultimate source of authority was divine and that God delegated supreme power on earth to a single head, either Pope or Emperor. Still later the theory of divine right was added to uphold the sovereign power of the kings of the rising national states. In its modern form the theory of popular sovereignty was revived by the anti-monarchists of the sixteenth and seventeenth centuries.[1] They attacked the prevailing system of absolute monarchy and defended the sovereignty of the people on the basis of the law of nature and an original social contract. Locke, in England, put forward the theory to justify the revolutionary movements of the seventeenth century. The chief impetus to the adoption of this theory was given by the writings of Rousseau and Jefferson, and by its adoption as the basis of the French and American revolutions. After that time it was generally accepted as the logical foundation of democratic government.

Several objections, however, arise the moment one attempts to analyze this concept and to give it a definite and legal meaning.[2] The people as an indeterminate mass cannot exercise sovereignty. Unorganized public opinion, however powerful, is not an expression of sovereignty. Sovereign power can be exercised only by those upon whom the law confers the right to take part legally in expressing the will of the state through governmental machinery. In this sense the sovereignty of the people at its best would be only "political" sovereignty ; that is, the general will which influences the action of the state, or the general consent to submit to authority and law. At its worst the sovereignty of the people would mean the potential power of the mass and the possibility that, by revolution, they might overthrow the existing legal organization of the state and create one more to their liking. In any case, neither the influence of their public opinion nor the might of their potential power of revolution is sovereignty.

If the idea of popular sovereignty is taken in a more limited sense to mean the sovereignty of that part of the population

[1] See Marsiglio, *Defensor Pacis* (1324) ; *Vindiciae contra Tyrannos* (1576) ; Althusius, *Systematic Politics* (1603).

[2] H. J. Laski, "The Theory of Popular Sovereignty," in *Michigan Law Review*, January, 1919.

who are given the right the vote, it means nothing more than the fact that in a state where suffrage is widespread the majority of voters are in a position to make their will prevail, in the long run, through legal channels. By electing representatives or officials who will carry out their policies, or sometimes by expressing their will in a referendum, the voters share legally in the exercise of sovereignty. But even in this sense not more than two fifths of the population in the most democratic states possess the right to vote. And in closely contested elections the majority would form little more than one fifth of the population. Hence the sovereignty of the people would mean the sovereignty of an indeterminate number comprising a small minority of the whole population of the state.

The theory of popular sovereignty destroys the value of sovereignty as a legal concept. If a state consists of a people organized by means of a government which makes and enforces law, some organization and some method of government is the legal one ; otherwise no state exists. Any attempt to make or enforce law except by legal means is not an act of the sovereign, but is an illegal revolt. The people can exercise sovereignty only through legal channels, in which case most of them cannot exercise it at all, and most of those who can will exercise very little ; or they must exercise it through revolution, in which case sovereignty is being relocated and will reappear in another form, since continuous revolution would destroy the state. Hence the sovereignty of the people is, in time of peace, nothing more than public opinion ; in case of a contest, only the "might of revolution"—not a legal power but a revolt against the existing sovereign. Popular sovereignty could be exercised only by a constant series of revolutions or by a constant system of referendums, practically impossible in modern large states. Sovereignty of the people is, in fact, by the very definition of the state a contradiction in terms.

At the same time the concept of popular sovereignty contains several valuable ideas. The tendency in modern states is to organize the state and locate sovereignty in such a way as to enable public opinion to express itself in a legal way as readily as possible. This development is ordinarily called the growth of democracy ; and some of its most important devices are

written constitutions, a wide electorate, representative legislatures, frequent elections, local self-government, responsibility of government to the majority party, and the use of initiative and referendum and of direct-primary nominations. By these and similar means a satisfactory relation is maintained between the mass of the people and the government, and the danger of revolution is minimized. *Constitutional* government is valuable, since it prescribes definite legal ways by which the state will exercise its sovereign power, thus protecting citizens from arbitrary action, such action being illegal. *Popular* government is valuable, since it provides means through which the wishes of the people may be known, with the probability that these wishes will be considered by the state. In modern constitutional, democratic states the contacts between public opinion and sovereignty are numerous, though legally they are quite distinct. The moral influence of public opinion must not be confused with the legal power of the state to create law.

A modified form of the popular-sovereignty theory arose in France at the time of the French Revolution. It held that sovereignty resided in the nation, which was viewed collectively as a corporate person. This theory represented the strong influence exerted at that time by the idea of nationality. It was also intended to oppose the theory of Rousseau that sovereignty was divided equally among all the individuals in the state. It was desired to combine the democratic background of popular sovereignty with the concept of the state as the nation personified and united. This theory was, of course, an abstraction, since sovereignty can be exercised only by persons acting through governmental organs, and not by the nation as a collective whole. The nation has no personality or will distinct from those of the individuals that compose it.

3. *Sovereignty as constitution-making power.* After the theory of popular sovereignty had successfully accomplished its work of overthrowing royal sovereignty and of establishing democratic government, it was reëxamined in an effort to find more definite and legal location of the sovereign power. This was the work of a number of jurists in the nineteenth century, who reached the conclusion that sovereignty is located in that body

of persons who make the constitution of the state or who, once the constitution is made, possess the legal power to amend it. This theory, which is essentially juristic in nature, reasoned as follows. The supreme law in a state is its constitution. This body of principles creates the framework of government, outlines its powers, and adjusts the relation of the state to its citizens. Hence the government is limited in its powers by the constitution, and is inferior in authority to the body that may create or change this fundamental law. Whoever create the constitution make the supreme law of the state and express its direct will ; therefore they are sovereign. In some states the national legislature exercises this power ; in others a special organ or a special method of procedure is required for constitution-making.

This theory avoids the vagueness of the popular-sovereignty doctrine, and at first sight seems logical and satisfactory, since it locates supreme authority in a definite organ that seems to possess final legal authority. Nevertheless, serious objections may be urged against it. The sovereignty of the state is being constantly exercised ; yet in those states which provide a special organ for amending the constitution, that body acts intermittently and at infrequent intervals. It seems scarcely logical to consider sovereignty, the life and essence of the state, as lying dormant in a body that seldom comes into existence. Sovereignty, as a matter of fact, lies in the organs which express the state's will now, not in the original body, often revolutionary, which created the constitution in the past, nor in the body which, on occasion, may change that document by the legal process of amendment.

A more serious objection strikes at the root of the apparent legality of this theory. The constitution-amending organ does not possess the legally unlimited power that is the essence of sovereignty. It cannot make any law that it chooses nor exercise the actual power of government. It can legally do one thing and one only ; that is, amend the constitution. Any attempt to go beyond this power and to make any other law would be an illegal usurpation of power. We thus have the contradiction of the sovereign body's being legally limited to the exercise of a single and specific function. The constitution-

making body, therefore, is not sovereign. It is merely a part of the government, possessing the legal power to exercise the limited, though important, function of redistributing the total exercise of sovereign power among the various other organs of government. It has no further power, and it must act only in the legal manner prescribed by the constitution of the state. This distinction is not readily apparent in states like Great Britain, where the national legislature may amend the constitution as well as make ordinary law ; but it is obvious in states like the United States, where the legal power to amend the constitution demands a special procedure and may even utilize special organs of government created for the purpose, such as a national convention or conventions in the several states. Such bodies, if created, would not possess full sovereign power, but merely the legally limited power of doing one specific thing—that is, of amending the constitution.

4. *Sovereignty of the lawmaking power.* This theory locates sovereignty in the sum total of all the lawmaking bodies in the government, if these act within the scope of their legal competence and in the legal manner provided by the constitution and laws of the state. Since the expression of the state's will is its highest manifestation of power, all those bodies that share legally in expressing that will are exercising sovereign power. These would include not only the representative legislatures, national and local, but the courts, in so far as they create law ; the administrative officials who possess discretionary powers ; the electorate, when deciding issues by referendum or elections ; and the special organs, if any, that may amend the constitution. This theory considers the state as a unit and its government as a unit. Sovereignty resides in the state and is exercised by its government. Sovereignty as a whole is a unit, but the exercise of its various powers may be distributed among numerous organs of government, the aggregate of these bodies being the depository in which the state's sovereignty is located. Some of these bodies possess a large share ; some, a small share. It must be remembered that each organ must exercise such powers and must proceed in such manner only as the constitution and laws of the state prescribe, though these may be changed in a legal way and sovereign powers redistributed,

if desired. It is, of course, true that the laws of the state will not always be perfectly executed or obeyed, but this discrepancy results from defects in human nature or from defective organization of the state, and does not destroy the legal nature of sovereignty.

In many respects this is the most satisfactory solution to the difficult problem of locating legal sovereignty within the state. It combines the strong points of the popular-sovereignty theory with the legal definiteness of the constitution-making theory, and it adheres most closely to actual facts. Like the popular-sovereignty theory, it recognizes that in modern democratic states sovereign powers are widely distributed and exercised by a large number of the state's citizens. Like the constitution-making theory, it recognizes that sovereignty is a legal concept and can be exercised only through legal channels and in a legal manner. It avoids the vagueness and loose thinking of the first point of view ; at the same time it steers clear of the legal abstraction which in the second, by pushing sovereignty too far back, almost destroys its existence. It corresponds with the facts in that it conceives of sovereignty as exercised by those organs of government that are constantly, yet legally, engaged in framing and giving efficacy to the state's will. Sovereignty resides in the state, but only through the laws made and administered by its government can its sovereignty be manifested.

***De Facto* and *De Jure* Sovereignty.** The distinction between *de facto* (or actual) sovereignty and *de jure* (or legal) sovereignty becomes important in case of revolution. A revolution may be defined as a successful, though illegal, relocation of sovereignty. An unsuccessful attempt at revolution is a rebellion. Revolutions may be of two kinds : (1) internal, where the aim is to overthrow by other than legal methods the existing distribution of sovereign powers within the state ; and (2) external, where a part of a state attempts to break away and set itself up as an independent and sovereign state. The French Revolution was an example of the former type ; the American Revolution, of the latter. The attempt of the Southern states to secede from the American union was a rebellion. While revolutions may be morally justifiable, they

are never legal. The so-called "right of revolution" is not a legal right.

While a revolution is in progress, there are two rival claimants of sovereignty : the former, legal, or *de jure*, sovereignty, and the new, illegal, and revolutionary aspirant to supremacy. If during the revolution the new group is actually able to govern and to make its will prevail, it becomes *de facto* sovereign. The authority exercised by Cromwell in England, by Napoleon in France, and by the Bolshevist group in Russia after 1917 were examples of *de facto* sovereignty in internal revolutions. The American colonies during the American Revolution and the Southern Confederacy during the Civil War exercised *de facto* sovereignty in external revolution. The temporary occupation of part of the territory of a state by a hostile army whose commander displaces the local authority and demands obedience from the inhabitants is another example of *de facto* sovereignty.

If the attempted revolution ultimately fails, the *de facto* sovereignty never becomes *de jure*, and is considered legally never to have been a sovereignty. If, however, the revolution succeeds, the *de facto* sovereign becomes the *de jure* sovereign. Success and the lapse of a reasonable period of time would be sufficient to give the new sovereign a legal basis, but it usually adds a more formal sanction. In the case of an internal revolution this might be secured by some expression of acquiescence by the people ; in the case of an external revolution, by the formal recognition by other states of the independence of the new state. Men naturally dislike a power which rests only on force, and the establishment of a legal basis for the actual sovereignty strengthens its moral claim to the obedience of its subjects. When the *de facto* sovereign succeeds in becoming *de jure*, it dates the beginning of its sovereignty not from the day when it was recognized as *de jure* but from the day when it established itself as *de facto*. For example, the American states date their sovereign independence from 1776, when they declared themselves *de facto* independent, and not from 1783, when their independence was recognized by England. Had the Southern states succeeded in their attempted secession, they would date their independence from 1861. Since they failed,

they were never legally sovereign, though they actually governed themselves and were *de facto* sovereign from 1861 to 1865.

Revolutions may be sudden or gradual, violent or peaceful. The essential characteristic of a revolution is the fact that the relocation of sovereignty which results takes place by a process other than the one legally recognized by the constitution and laws of the state concerned. In a sense the conquest and annexation of one state by another or the federation of several sovereign states into one state is a revolution, since each involves the destruction of a previously existing sovereignty. The fact that *de jure*, or legal, sovereignty may be created by successful revolution or by successful war is an illustration of the principle that sovereignty rests ultimately on force or on the consent of a sufficient number of persons to imply potential force.

While the terms "de facto" and "de jure" are usually applied to sovereignty, it would be more strictly scientific if they were applied to government. By its definition sovereignty is a legal concept, and there can be but one legal sovereignty in the state. The *de jure* sovereignty alone is sovereign in this sense, and the so-called *de facto* sovereignty does not become sovereignty until it becomes *de jure*. An unlawful sovereignty is a contradiction in terms. A *de facto* government may exist in a state during a period of revolution, and may, in fact, exercise the full powers that are associated with sovereignty. Not, however, until it acquires legal status does it exercise, in a legal sense, sovereign powers. It is obvious that in a well-organized state the *de jure* sovereignty should also be *de facto* ; that is, it should correspond with the actual location of power, should be supported by the consent of the people, and should be able to make its will effective. When such a condition does not exist, revolution is likely, for the purpose of creating a *de jure* sovereignty that will correspond to the existing conditions. Political expediency demands that sovereignty shall possess a legal status and at the same time be able to maintain itself by actual force.

Limitations on Sovereignty. While sovereignty, the supreme power of the state, cannot be legally limited, there are in practice certain limitations which may or should limit the

full exercise of its powers. In the first place, the sovereign cannot do what is impossible. A law forbidding the sun to rise would be within the legal scope of the sovereign's power, but would be obviously ridiculous. Similarly, a law forbidding persons to hold certain opinions would be perfectly legal, but would be impossible of enforcement unless those opinions were written or spoken. It is useless for the sovereign to forbid what it cannot discover or control.

1. *Moral limitations.* Many early writers argued that sovereignty was limited by divine law, by natural law, or by moral law. The generally accepted principles of religion, morality, and justice undoubtedly influence the exercise of sovereignty. But the laws of God and of nature must be interpreted by human agencies ; they exercise no sovereignty of themselves. They are not legal limits, but a part of the intellectual atmosphere in which laws are made. They limit sovereignty only in the sense that a wise state will not enact laws contrary to generally accepted ideas of morality and justice, because of the opposition such laws would arouse, leading to difficulties in enforcement or even to revolution. Only such laws as are supported by a general consensus of opinion can be successfully administered. The most despotic of sovereigns would encounter difficulties if they attempted to interfere with the religious beliefs or the longstanding customs and traditions of their subjects. The fact that sovereignty is legally unlimited does not imply the moral right or the expediency of regulating all the interests and activities of the people. In modern states many aspects of life are exempt from governmental interference, and any state which attempted to exercise its legal power to interfere in certain relations of human life would soon be overthrown by revolution.

2. *Constitutional limitations.* Some writers have argued that sovereignty is limited by the constitution of the state. They make a distinction between fundamental, or constitutional, law and the ordinary laws made by the government, holding the former to be the higher law, and the latter to be valid only if they accord with the former. To this point of view two objections may be urged. The sovereignty of the state is not limited by the constitution, since the state may

legally amend its constitution whenever it desires. A limitation self-imposed and removable at pleasure is not a real or a legal limitation. What is limited by the constitution is not the state or its sovereignty, but the government of the state. The various organs of government must keep within the constitutional sphere of their powers and must act in the legal method prescribed, if their acts are to be legal. But this provision for a legal distribution of the exercise of its sovereign powers places no limitation on sovereignty itself. Even the method which the state legally prescribes for the amendment of its constitution may be changed by the state, and is in no sense a legal limitation on its sovereignty.

In the second place, there is no such thing as a higher law and a lower law. Laws may differ in the importance of the questions with which they deal ; but the so-called lower law either is not law at all, in case it is made by a body that had no legal right to make it, or it is law, in case it is legally made by a body possessing the legal authority and acting in the legal manner. In the first case it is an unconstitutional or illegal law ; therefore not a law at all. In the second case it is law, of equal legal validity with the highest law. A law made by a subordinate lawmaking body, provided it has the legal right to make that particular law, is as truly law as the law made by the constitution-amending body itself. Both are exercising that share of the sovereign power of the state which its legal system of organization allots to them. The constitution differs from other law in nature and in purpose, but not in legal validity. Like other law, it is an expression of the sovereign will of the state and not a limitation upon it.

3. *International limitations*. Many writers[1] today hold that the sovereignty of a state is limited by the rules of international law and by the treaties and conventions into which it enters

[1] J. A. Hobson, *Toward International Government* ; Norman Angell, *The Great Illusion* ; E. M. Borchard, "Political Theory and International Law", in C. E. Merriam and H. E. Barnes's (eds.) *History of Political Theories, Recent Times*, Chap. IV ; E. D. Dickinson, *The Equality of States in International Law* ; J. W. Garner, "Limitations on National Sovereignty in International Relations," in *American Political Science Review*, February, 1925.

with other states. According to the strict juristic theory of sovereignty these restrictions are not legally binding. They are voluntary limitations, self-imposed, which a state may legally repudiate, and no legal authority exists to enforce them. Sovereign states must be, in the last analysis, the judges of their rights and obligations to other states. They may repudiate their treaties, refuse to be bound by the accepted rules of international law, and declare war in defense of their interpretation of their international rights. International law is not law in the sense that it is the will of a sovereign, enforceable on subjects.

Nevertheless, the legal theory of the complete external sovereignty, or independence, of states is not in accord with the facts of present-day international life. The development of international good faith and the complex interrelations among states make it undesirable, and in many cases impossible, for each state to be its own interpreter of international obligations or to fix its own standards of international conduct. A state which is injured by a violation of international law may demand reparations for such injury or may use force to defend its international rights. Only when the offending state is so strong that no one dares to resist can it exercise complete freedom of action in international affairs. The concept of external sovereignty has done much harm in preventing the development of international law and international solidarity. It is a legal fiction, no longer corresponding to the facts of international life, and should be abandoned. As pointed out before, the term "sovereignty" applies properly to the internal legal supremacy of a state over its own subjects. Externally, states possess a certain degree of independence, but the rules of international law are acquiring a legal basis which, in fact, places limits on the external independence of action of each state in its dealings with other states.

If, as some writers believe, the present tendency is toward the development of an international organization with unified control, the result would be a world-sovereign state, with the right to create and enforce law. In that case, what we now call international law would become law, but would cease to be international, being the unified will of a world state. What

is now called external sovereignty would cease to exist, being swallowed up in the internal sovereignty of the world system. Most writers, however, believe that it is more feasible, under present conditions, to develop internationalism on the basis of sovereign national states. If this is to be done, the traditional theory of the external sovereignty and equality of states must be modified to permit a certain degree of international control.[1]

Attacks on the Theory of Sovereignty. The concept of internal sovereignty as the essence of the state has been attacked from several points of view. One group of writers denies the existence of sovereignty or argues that it is not necessary to state existence. Another group denies that sovereignty is the source of law, holding that law exists outside the state and is superior to its sovereignty. Still another group denies that sovereignty is the exclusive possession of the state, and argues for a plurality of sovereignties possessed by various associations.

1. *Sovereignty not necessary.* Many writers have argued that sovereignty is not essential to statehood, holding that states may be partly sovereign, and that the test of statehood is the right to govern, the power to command not derived from any other authority. This doctrine was put forward especially by writers in Germany, Switzerland, and the United States for the purpose of claiming statehood for the members of a federal union.[2] This theory would hold that the members of the German Empire, the Swiss cantons, and the commonwealths of the American Union were states, even though not fully sovereign. It would apply today to the self-governing British dominions, which possess almost complete autonomy, and even an international status. All these political bodies possess constitutions of their own and governments whose character they are almost entirely free to determine, though they are not fully sovereign nor free to determine the limits

[1] E. M. Borchard, "Political Theory and International Law," in C. E. Merriam and H. E. Barnes's *History of Political Theories : Recent Times*, Chap. IV.

[2] Laband, *Staatsrecht des deutschen Reichs*, Vol. I, pp. 107-108 ; Jellinek. *Recht des modernen Staates*, Vol. II, pp. 142-151 ; W. Wilson, *An Old Master and Other Political Essays*, Chap. III.

of their own competence. Members of a federal union have their legal status only in the union, and have such powers only as its constitution gives or reserves to them. While it is true that such political units are much more than mere administrative districts or provinces of states, nevertheless, in the opinion of most jurists, the term "state" cannot properly be applied to them unless they are completely and legally sovereign. In the case of members of a federal union the tendency seems to be in the direction of diminishing their original powers. In the case of the British dominions the tendency seems to be toward complete independence and statehood.

Some writers[1] go so far as to deny the existence of sovereignty, holding it to be only an outworn and useless fiction. They argue either that it is a futile doctrine that does not correspond with the facts of present-day life, or that it is a dangerous doctrine that leads to an irresponsible and unlimited power, destructive of human rights and freedom. Some of these writers attack the idea of state sovereignty because of their desire to give full autonomy to other associations than the state ; others, because of their interest in individual freedom. In the latter case the theory shades off into anarchism. While it is true that the theory of state sovereignty has been perverted for the purpose of glorifying the state at the expense of individual freedom, it is also true that in organized social life there must be somewhere a final authority which exercises social control by means of law. In the modern world such control is exercised by the state. To ascribe to it legal sovereignty does not necessarily imply irresponsible and tyrannical power. The state may be sovereign, and still realize that not all social relations need legal control, and that many other institutions may be permitted to exercise a large degree of control over their own interests. The attack on state sovereignty is valuable chiefly in pointing out certain defects in the

[1]M. Duguit, *Droit constitutionnel*, Vol. I, pp. 86-107 ; *Law in the Modern State*, trans. by F. and H. Laski ; H. J. Laski, *The Problem of Sovereignty* ; H. Krabbe, *The Modern Idea of the State*, trans. by Sabine and Shepard ; A. D. Lindsay, "The State in Recent Political Theory," in the *Political Quarterly*, No. 1 (February, 1914) ; E. Barker, "The Discredited State," in the *Political Quarterly*, No. 5 (February, 1915).

governmental organization of modern states which impede or distort the proper exercise of sovereign power.

2. *Sovereignty not the source of law.* Recently a group of jurists[1] has attacked the orthodox, or Austinian,[2] theory of state sovereignty as the supreme and only source of law. They argue that law is a system of rules resting upon social necessity or social solidarity and that it exists outside the state, anterior to its creation and independent of its will. The state itself is a subject of law, and is bound by the rules of law. Men possess rights which the state is legally bound to respect, and the law imposes legal limitations upon the sovereignty. According to this theory the state has self-determination only within the limits of a superior body of law, which has its source outside the state and independent of it. The law, therefore, becomes sovereign. Its sanction is not the power of the state, but social approval, or approbation, resulting from the social sense of right and justice.

It will be observed that this theory is essentially a revival of the theory of natural rights and natural law under a different name, and that it has the defects inherent in that theory. The theory that the sovereignty of the state is legally limited by the principles of natural law cannot be accepted, since the state itself is the judge of what those principles are and the extent to which they ought to be observed. Such limitations would be only self-limitations and not legally binding. The theory that the state is limited by law confuses the meaning of the term "law" by applying it to influences that are not law. It also confuses state and government. In many cases, when persons assert that the state is limited by law, they really mean that the organs of government are limited by law, which is quite correct ; but this is not a limitation on sovereignty.

3. *Sovereignty not the exclusive possession of the state.* The

[1] M. Duguit, *Transformations du droit public*, Chaps. I—III ; H. J. Laski, *Grammar of Politics* ; H. Krabbe, *Modern Idea of the State* ; W. J. Brown, "The Jurisprudence of M. Duguit, in *Law Quarterly Review*, Vol. XXXII, pp. 168-183.

[2] John Austin, *Lectures on Jurisprudence* (1832).

pluralist school[1] attacks the idea that there is but one sovereignty in a state and that sovereignty is possessed by the state alone. They argue that man's social nature finds expression in many groupings, performing various functions and pursuing various ends, social, religious, economic, political. These groups arise naturally and spontaneously ; they are not created by the state, nor are they dependent on its will for their existence, nor do they exercise only such powers as the state confers upon them. They compete with the state for men's loyalties, and are as sovereign in their respective spheres as the state is in its sphere. This point of view holds that the state's claim to supreme authority is not in accord with actual facts in the complex world of today. They discredit the state, oppose the theory of a single and unified sovereignty, and demand for other agencies a large share of social control.

This attack on the sovereignty of the state came from various sources. It represented in part a reaction against the strong, centralized, and paternalistic state of the latter nineteenth century and aimed at decentralization of authority and greater individual freedom. It owed much to research in historical jurisprudence, and to a revival of the medieval theory of the real personality of corporations, possessing inherent rights of their own. It received support from churchmen who desired to free the church from state control and to reassert its supremacy in the spiritual field. It was upheld by sociologists,[2] who criticized the existing political structure on the ground that it does not represent adequately the present complex functional organization of society. In particular, it represents the growing importance of economic interests in the state and the desire of economic groups to control their own affairs, free

[1] O. V. Gierke, *Das deutsche Genossenschaftsrecht* ; F. W. Maitland *Collected Papers*, Vol. III, pp. 304-320 ; *Political Theories of the Middle Age*, introduction ; J. Paul-Boncour, *Le Fédéralisme économique* ; J. N. Figgis, *Churches in the Modern State* ; *The Will to Freedom* ; H. J. Laski, *Authority in the Modern State* ; *Foundations of Sovereignty* ; G. D. H. Cole, *Social Theory* ; *Guild Socialism* ; S. G. Hobson, *National Guilds and the State*.

[2] See H. E. Barnes, "Some Contributions of Sociology to Modern Political Theory," in *American Political Science Review*, November, 1921.

from state interference. They argue for self-government in industry or even for the reorganization of the state on an economic basis, with authority distributed among the economic groups. The common element in all these attacks on the sovereignty of the state is the belief that in the state there are associations which evolved independently, which perform essential social functions, and which are better adapted than the state to serve certain social needs. Some of the pluralists would practically destroy the state ; others would deduce it to an equality with other associations ; others would retain it, with much reduced powers, as the final coördinating authority in case of disputes among the other groups.[1]

Pluralism is the natural point of view of a period of conflicting interests and loyalties. In the Middle Ages, when church and state struggled for supremacy and when groups of various kinds exercised independent powers, pluralistic ideas flourished. For a considerable period after the adoption of the American constitution the theory of divided sovereignty was generally held. The relation of the states to the Union had not yet been adjusted. It took a half-century of political experience to develop a spirit of unity and a set of legal principles upon which a monistic theory of sovereignty for the American federation could rest. At the present time the growth of economic interests and the strength of economic associations have created conflicts of authority between them and the existing organs of government. The state does not immediately adapt its organization and law to correspond with new conditions. At such a time the doctrine of the absolute and unlimited authority of the state seems to many dangerous and undesirable. Hence pluralistic doctrines again appear. It is probable that as the conflicts are adjusted, and the state gradually gives legal recognition to the new forces in social life and remodels its organization to correspond more closely with the actual sources of power, pluralism will disappear.

Pluralists often confuse legal and moral ideas and fail to make a proper distinction between state and government. Their the-

[1] W. J. Shepard, "Sovereignty at the Cross Roads," in *Political Science Quarterly*, December, 1930.

ory, in practice, would probably result in chaos and anarchy, followed by the reëstablishment of some form of supreme authority. The conflicting interests of numerous independent groups would intensify the need for a superior authority. At the same time their doctrines have made valuable contributions to political thought. Their emphasis on the fact that states, in spite of legal omnipotence, should be subject to moral restraints is a desirable reaction against the idealization of the state and the doctrine that the state is an end in itself, free from all moral restraint. The pluralists also make a timely protest against the rigid and dogmatic legalism of the Austinian theory of sovereignty. They emphasize the necessity of studying the actual facts of political life in a rapidly changing social system. In this connection they point out the growing importance of nonpolitical groups, the danger of overinterference by the state with the proper functions of such groups, and the desirability of giving to such groups greater legal recognition in the political system. Decentralization of government and the principle of group representation in legislative assemblies appeal to many as possible solutions. Nevertheless, this is a problem of the proper internal organization of the state and of the proper scope of its activities, and does not imply the abandonment of the theory of state sovereignty. Somewhere there must be an organization of supreme legal control, and however much the state may limit its activities or reorganize its internal structure a sovereign state still remains.[1]

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[1] J. Dickinson, "A Working Theory of Sovereignty," in *Political Science Quarterly*, December, 1927 ; March, 1928.

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CHAPTER X

CIVIL AND POLITICAL RIGHTS

OUTLINE

Sovereignty and Liberty
Nature of a Right
Meanings of the Term "Liberty"
1. Natural liberty
2. National liberty
3. Political liberty
4. Civil liberty
Political Rights
Content of Civil Rights
1. Right of life
2. Right of personal freedom
3. Right of property
4. Right of contract
5. Right of free opinion and expression
6. Right of freedom of conscience
7. Right of association
8. Right of family life
9. Right of equality before the law
Guaranty of Civil Rights
1. Protection against other individuals and associations
2. Protection against the government
Adjustment of Sovereignty and Liberty
1. Democracy and despotism
2. Individualism and paternalism

Sovereignty and Liberty. A discussion of sovereignty leads naturally to a consideration of liberty. Sovereignty represents the authority of the State; liberty, the freedom of the individual. The proper relation between the individual and the state has long been a problem on which great thinkers have differed. Whether the individual or the state is the more important unit, and which should be given precedence at the expense of the

other when interests conflict, is a controversy that affects many aspects of human life. There is, on the one hand, the doctrine that the state is a necessary evil ; that it should do nothing except maintain peace and order, and thus give opportunity for individuals to develop freely according to their ability. On the other hand is the belief that the state should exercise large powers and subordinate the individual to the interests of the whole.

The various theories as to the best adjustment of individual and state activities and the proper scope of state functions will be discussed in the latter part of this volume.[1] At present the question of liberty will be reviewed in its relation to the sovereignty of the state. The preceding chapter emphasized the fact that in every state some authority must exist, supreme over every individual and every association of individuals within the state. Its power is legally absolute and unlimited, and it may use force to compel obedience. This is called sovereignty. Each individual, however, is interested in securing conditions under which he may achieve his highest development and freedom. Apparently there is a fundamental contradiction between sovereignty and liberty.[2] If the authority of the state is absolute, how can liberty exist ? If the individual has liberty, what has become of sovereignty ? Sovereignty carried to the extreme becomes tyranny and destroys liberty, and liberty carried to the extreme becomes anarchy and destroys sovereignty. The efforts made by states to reach a satisfactory compromise between these two equally undesirable extremes comprise a large part of the history of politics, and no permanent solution has yet been reached. Changing conditions compel constant readjustments. However, a careful analysis will show the real nature of liberty and will prove that, instead of being opposed to sovereignty, it is dependent upon it. In fact, liberty, in any real and dependable sense, is possible only if sovereignty exists, and becomes more perfect and valuable as sovereignty is more completely and accurately organized.

[1] See Part IV.

[2] A. T. Hadley, *The Relations between Freedom and Responsibility in the Evolution of Democratic Government.*

Nature of a Right. A century and more ago men spoke much of natural rights. Life, liberty, property, the pursuit of happiness, and other similar privileges were considered inalienable rights under the law of nature. A condition of perfect freedom, existing before governments arose, was conceived, often with a sigh of regret that this perfect "state of nature" could not last forever. Analysis shows the fallacy in such thinking. In a state of nature real liberty for all would be impossible. Each person would have "rights" only as he could secure them by superior force of cunning. The "natural rights" of one would encroach upon the "natural rights" of others, thus destroying the freedom of all. That every person could have complete freedom to do as he chooses in all things is obviously absurd. Rights would be possessed only in a moral sense, -- not in a legal sense. It is unfortunate that in the English language the same word, "right," is used in a moral sense as the opposite of wrong and also in a legal sense as the opposite of legal obligation. In a state of nature each person would possess natural *might* but not natural *right*.

The greatest liberty possible for all results when each person has the right to do as he pleases while encroaching least upon the equal right of others to do the same. Liberty in society has therefore both a positive and a negative side. It includes right to free action and immunity from interference ; but in order to maintain such a condition some authority is needed that can set bounds to the liberty of each and protect the liberty of all. The organization that arose for this purpose is the state. Since it is sovereign over all, it alone, through its law, can create and enforce rights and obligations. It is therefore the only source of real liberty. Evidently, then, the individual has no rights or immunities, except in a moral sense, against the sovereign state. The state takes his life as a penalty for offenses against its law, or, if needed, in war. The state takes his property in the form of taxes ; his liberty is limited by restrictions of many kinds ; his pursuit of happiness must not run counter to similar pursuits on the part of his neighbors. As population grows and society becomes more complex, the relations of man to man need more constant safeguarding, and

the liberty of each is more restricted for the best interests of all.

The state, then is the only source of legal liberty. Its sovereignty alone enables rights to exist. Not only are its laws limitations on the freedom of individuals, but they are the only guaranties and defenders of individual freedom. Anarchy, instead of creating absolute freedom, would destroy it. Sovereignty and liberty are not contradictory terms, but correlative, the same things viewed from different aspects—the former from the state's point of view, the latter from that of the individual. The proper adjustment of authority and freedom, avoiding dangerous extremes, and the securing of rights as nearly equal as possible for all—these are the chief problems of the state.

Meanings of the Term "Liberty". In ordinary practice the term "liberty" is used in various senses, which illustrate the tendency to loose thinking in political terminology, with resultant confusion.

1. *Natural liberty.* In everyday usage the term is ordinarily associated with the desire to do as one likes, to be free from interference or from social conventions, to think and act as one chooses. Everyone has a vague notion of liberty and a desire for it, but few would agree as to what they mean by it.

2. *National liberty.* Sometimes liberty is used as synonymous with political autonomy or independence, the freedom of a people from the control of another state. Thus the American colonies won liberty from England, or the Greeks fought a war for liberty with the Turks. The principle of self-determination of nations implies liberty in this sense. From this point of view a free country is one which is independent. Evidently this is sovereignty in its external aspect. A people possesses national liberty if it forms a sovereign state. National liberty is simply external sovereignty, or independence.

3. *Political liberty.* Sometimes liberty is used as synonymous with democracy, or popular government. Men speak of a "free government" if the people themselves determine how they shall be governed. In this sense liberty refers to the political rights possessed by the people, that is, the share in governing authority which the state confers upon certain of its

inhabitants. If these are extensive and widespread, the state is democratic, and many persons possess political right, or political liberty. Other things being equal, a government controlled by the people may be expected to safeguard better the interests of all than a government controlled by a class or by a few, but this is not necessarily true. A benevolent despot may permit more liberty than a democracy that disregards the wishes of a large minority. Political liberty depends upon the location of sovereignty and the organization of government in each state.

4. *Civil liberty*. Civil liberty consists of the rights and privileges which the state creates and protects for its subjects. It implies the right of each to do as he chooses within the limits set down by law. It may involve protection from interference at the hands of other persons or protection from interference at the hands of the government. Civil rights are those rights to be free rom restraint in the pursuit of their interests which the state confers upon its people by law and which it will protect in its courts. If properly organized, such rights will apply equally and impartially to all.

It will be observed that of the four types of rights, named above, two—natural and national—are moral rights, while two—political and civil—are legal rights. Men possess natural rights in the sense that they believe that there are certain individual privileges with which other persons and the state should not interfere. If, however, these rights are not respected by the state and protected by its law, the only recourse is revolution. Peoples possess national rights in the sense that they desire independence and the right to govern themselves. If this desire is not granted by the existing sovereignty, the only recourse is war. Political and civil rights alone are rights in the legal sense. They are created by the state and guaranteed by its law. With these rights the remainder of this chapter will deal.

Political Rights. Political rights are possessed by those persons whom the state permits to share in the legal expression and administration of its sovereign power. They are exercised by voting or by serving as an official of the state. They are

created by the constitution and laws of the state. They are usually regarded as privileges, the exercise of which is optional on the part of citizens ; but some states make the performance of certain political duties, such as voting, compulsory, and impose penalties for refusal to act. Under certain conditions military service is generally compulsory.

When political rights are widely diffused, the government of a state is democratic ; hence political liberty is practically synonymous with democracy. Democracy may be direct, when those possessing political rights share directly in expressing the state's will and in the management of its government, or indirect, when the voters elect representatives and delegate to them the work of carrying on the government. The former type is possible only in small states, where citizens can meet together and express their opinions ; the latter is necessary in large states, where it is physically impossible for such meetings to be held. By the devices of initiative and referendum, through which the voters may directly propose and decide on laws, an attempt has been made in some countries to retain certain aspects of direct democracy. Underlying democracy is the idea that as many citizens as possible should share in the exercise of political rights, that the official positions of government should be open to all, and that the laws of the state should represent the will of the majority of its people.

Each state decides what persons shall possess political rights, and the extent of such rights. Obviously, equal political rights for all are not possible. The sovereign power of the state cannot, in practice, be divided, as Rousseau held, into equal fractional parts for each person. The state must organize its government with a view to efficiency and to successful practical operation. Both reason and experience show that it is desirable to exclude certain persons from any share in government and that among those who take part some must have a larger share than others. The theory of equality on which democracy is based must be modified by practical considerations of expediency and order. Mob rule and disregard of the wishes of minorities, which are dangers in extreme democracies, may be as undesirable as despotism. The problem of the state

in creating political rights is to secure an organization in which legal sovereignty will coincide as nearly as possible with political sovereignty, in which as many persons as possible may possess political rights as nearly equal as possible without destroying the efficiency of the government, and in which general public opinion may be made into law without tyrannizing over those who hold different opinions. Democracy is not an end in itself, but a means to individual and social welfare ; and political rights are for those who are able to use them wisely.

Content of Civil Rights. A discussion of civil rights, which are the legal immunities of persons protected by the state against interference, must include the content of such rights and the methods by which they are guaranteed against other persons and against the government. The elements that compose civil rights, or individual liberty, have varied in different states and at different times. In modern civilized states the following are generally held to be fundamental, though difference of opinion exists as to the extent of these rights and the method of their protection.

1. *Right of life.* All rights depend upon life ; for unless life is secure, no rights are possible. Every state, however primitive, makes some provision for personal safety. In early times murder was avenged by the family and friends of the murdered person ; in modern states murder is punished by the state itself, usually by the most severe penalties. The idea of a life for a life, in capital punishment, includes both the desire for revenge and the idea of removing one who is dangerous to society. The growing demand for the abolition of capital punishment represents a belief that even a murderer has a right to life. Since society regards human life as valuable, the state views suicide as undesirable and sometimes punishes those who unsuccessfully attempt it. The right to life also involves the right of self-defense and the use of force to protect one's life.

2. *Right of personal freedom.* Mere life without the right to exercise one's faculties and to determine the general conditions of life would be valueless ; hence a certain amount of personal freedom is a desirable civil right. Slavery is generally con-

demned because it prevents a man from determining his own life. Any interference with the right to move or act as one chooses, not demanded by the general good of society, is resented. Physical restraint by the government for unjust cause led to the damand for the writ of *habeas corpus*, in order to secure a prompt and fair hearing and to make provision for redress for those wrongly arrested.

3. *Right of property.* Property of some sort is essential to the existence of man, and the desire for ownership is deeply seated in human psychology. Ideas concerning property change from age to age, and with these changes go changes in property rights. At present much controversy is waged over the problem of public as against private ownership and over the degree of government regulation of property interests that affect social welfare. Though the state protects private property against theft by other individuals, there is a growing tendency for the state itself to interfere increasingly with the property of its citizens.

4. *Right of contract.* Good faith and honesty in the carrying out of legal agreements are an essential basis of society ; hence the state protects and adjusts the rights and obligations growing out of contracts. At the same time it permits only such contracts as it considers conducive to the general welfare. As in the case of property, the tendency today is for the state to interfere increasingly with the freedom of contract for purposes of social regulation.

5. *Right of free opinion and expression.* In a free government freedom of opinion and its expression are permitted within certain limits. Public policy requires that attempts be not made to stir up violence or revolution, and that the reputation of other persons be protected against attack. Some states forbid criticism of the government and prohibit discussion of questions of public policy. In time of war, freedom of expression is usually limited for the purpose of maintaining internal unity and solidarity.

6. *Right of freedom of conscience.* While states have frequently permitted only a certain type of religious faith and worship, the tendency in the modern world has been toward religious

freedom and tolerance. Church and state, once closely interrelated, tend toward saparation. The church confines itself generally to spiritual matters, and the state tends to give up its official support of a particular church. While the state cannot control personal opinions of right and wrong, freedom of conscience does not give the individual a right to refuse to obey the laws of the state because they conflict with his moral ideas. The state cannot control beliefs, but it does control outward actions that result from certain beliefs.

7. *Right of association.* In modern society individuals enter into relationships for many purposes and create associations of many kinds. Some of these are temporary and slightly organized ; others are permanent, with elaborate organization. Some exist wholly within the boundaries of a particular state : others are international, and extend over many states. Social clubs, scientific associations, religious bodies, labor unions, and industrial and commercial corporations are among the most important of such groups. Some thinkers argue for the inherent rights of such associations and claim for them sovereign powers in their respective fields. In the modern world, however, these associations come under the legal control of the state. The state permits wide freedom in the formation of such associations and allows them to exercise large powers. Nevertheless, it may forbid certain types of association, and may regulate the others when they endanger the state or when they interfere with social welfare.

8. *Right of family life.* Though the state regulates marriage and divorce and enforces certain obligations in the relations of husband and wife and of parents and children, it leaves a large degree of freedom to the family in the regulation of its own relationships and in the inheritance of its property. A marked tendency in the modern world toward the legal equality of women in family relationships may be noted.

9. *Right of equality before the law.* In earlier times certain classes possessed special privileges or were judged by special laws. The modern tendency is to enforce the same law over all persons in the state and to give all persons equal legal rights and privileges in the protection of their civil liberty.

The idea of civil liberty arose when governments were despotic and when their arbitrary power was feared. Consequently, civil rights were mainly negative, consisting of limitations placed upon the power of the state. With the growth of democracy, distrust of governmental action declined, and the state, controlled by popular will, came to be considered as a promotive agency for social welfare. Under these conditions, recent theories of civil liberties have changed, and emphasis is placed increasingly on state action which may limit the freedom of some for the purpose of widening the opportunities of the many. In the Atlantic Charter, freedom from want and fear were added to the older concepts of freedom of thought and religion. The so-called "G. I. Bill of Rights" consists of various benefits desired by veterans from positive state action. Recent statements of civil rights include the right of employment, the right of an adequate wage, the right of workers to strike, the right of old-age benefits, the right of medical service, the right of education, the right of freedom from racial discrimination, and many other rights. It is obvious that this conception of civil liberty is not concerned with negative restrictions upon state interference, but rather with positive and promotive state action to confer benefits upon certain persons or classes within the state. It also indicates the increased interest of the state in the field of economic and social affairs, and the growing tendency toward dependence upon government in these fields.

Concepts of individual rights depend upon prevailing ethical standards. The ancient Greeks defined justice as giving to each his due. This was based on the idea of human inequality and the desire to fit each person in his proper place in order to secure harmony in the state. Modern ideas of justice emphasize rather the idea of human equality and equal rights for all. Both views have value. Insofar as persons are unequal in character and ability, it is recognized that honors and rewards should be given for outstanding talents and services. Insofar as persons are equal, it is proper to provide equality of opportunity. equality before the law, and the right of all to share in political power. A sound political science asserts the value of experts as well as the importance of the common man.

It must be remembered that civil rights are not absolute but relative. They are not natural rights, but legal rights created by the state and conferred by it upon its individual members. Any of them may be destroyed by the state or may be widened or narrowed as the state believes desirable for the protection of its own interests or for the furthering of the general welfare. The individual possesses no legal rights against the paramount sovereign power of the state.

Guaranty of Civil Rights. A further analysis of the civil rights that the state creates and safeguards shows that interference with these rights may come from (1) other individuals or associations of individuals ; (2) the government of the state itself. A well-organized state must protect the civil rights of its people against both kinds of interference.

1. *Protection against other individuals and associations.* The civil rights of individuals are protected against encroachment on the part of other individuals or associations of individuals by the law of the state, enforced by its regular governmental organs, especially the police and the courts. The body of law created for the purpose of adjusting the relations of individuals to one another is called private law. In its enforcement the government is the arbiter but is not a party to the controversy. The adjustment of man's relations to his fellows was one of the chief purposes for which the state arose. Further development in this field consisted in making such rights more definite, in making governmental enforcement of them more certain, and in extending equal rights to all classes in the state. Definite law, sure enforcement, and equality before the law marked the advance of civil liberty in the relation of man to man.

2. *Protection against the government.* In so far as civil rights consist of immunity from governmental interference, they are of comparatively recent origin. In earlier times the whole sovereign power of the state was vested in the ordinary government. Theocracy and despotism crushed individual will, and all the activities of man were subject to state control. Occasionally rulers promised reluctantly to respect certain liberties, but it was not until modern constitutional

states arose that the idea of civil liberty as a field into which the government might not enter became possible and that legal checks were placed on the manner and extent of governmental action. Civil rights are protected against governmental interference by the constitution, or public law, of the state. In adjusting the violation of such rights the government is not only the arbiter but also a party to the case ; that is, one organ of the government will act as judge in deciding a dispute between the individual and some other organ of government.

Modern states differ in the legal guaranties that their citizens possess against encroachment on the part of the government in the field of civil rights. Such differences depend on the nature of the constitution and the method of interpreting and amending it. Every modern state is based upon a body of fundamental principles, written or unwritten, called a a constitution. In accordance with these principles the state is organized, that is, its government is created, the scope of its powers and the manner of their exercise being broadly outlined. In this way the state organizes itself behind the ordinary government and places certain legal restrictions upon it. By means of a bill of rights in the constitution the sphere of civil liberty, in so far as immunity against the government is concerned, is indicated, since those powers forbidden to the government are reserved for the individual. Consequently the manner by which the civil liberties guaranteed in the bill of rights may be legally protected against the various organs of government determines the legal guaranties which the individual possesses against governmental encrochment.

If the constitution may be amended by the regular lawmaking body of the government, as is the case in some states, the legal position of the bill of rights is precarious, as it may be destroyed or modified by the ordinary government. If, however, the constitution may be amended only by a special body or by special procedure, the difficulty of amendment gives a certain security to the bill of rights. Even more important is the question of what organ of government has the final right to interpret the constitution, and whether or not such organ has the legal power to prevent other organs of government

from exceeding their legal powers. In most states the national lawmaking body is the final interpreter of the constitution, and whatever laws it passes are legal, even though they interfere with the civil rights granted in the constitution. In such cases the good sense of the legislature or the pressure of public opinion behind it alone protects the civil rights of individuals against governmental encrochment. In the United States, however, the Supreme Court is the final interpreter of the constitution ; and its power to declare laws unconstitutional, if the ordinary lawmaking bodies exceed their legal powers, gives to the bill of rights a special legal protection. If, however, the Supreme Court, in its interpretation of "due process of law," believes that proper procedure has been followed, it may permit a considerable infringement of the personal rights of individuals. To some extent the system of separation of powers and of checks and balances, by which one department of government shares in the functions of the others, serves as some protection to civil rights. For example, the president's power to veto a law or the Senate's right to reject a treaty might be used to protect the civil rights of individuals against governmental encroachment.

While devices of this sort may be used to guarantee the civil rights of individuals against interference by particular organs of government, the individual possesses no civil rights against the sovereign power of the state. The state may protect civil rights, through its law, against interference by other individuals or, through its constitutional system, against interference by any single organ of government. The sovereign state, however, always possesses the legal power and the legal machinery through which it may, if it chooses, destroy or limit all civil rights. The liberty of the individual is defended against the government by the sovereign power of the state, which makes and maintains and can change the government, and by the same power, through the government, against encroachment from any other quarter. Against that power itself, however, there is no defense.

The fact that a given state provides a legal method of protecting civil rights against governmental interference does not

guarantee that the sphere of civil liberty will be greater in practice in that state than in one where no such provision is made. The degree of liberty actually possessed depends upon the way in which the government is operated. In England, where civil rights are legally at the mercy of Parliament, the citizens enjoy a much greater degree of freedom from governmental interference than in certain Latin-American states or in Russia, where the constitutions contain elaborate bills of rights. A governmental organ such as the British Parliament, that possesses legally unlimited powers, may voluntarily leave to individuals a large degree of freedom. On the other hand, a governmental organ that is restricted by constitutional provisions may ignore such restrictions, especially if it is itself the interpreter of the constitution. The real guaranty of individual liberty is a public opinion that is tolerant and liberal, and a government that represents this attitude in practice.

Adjustment of Sovereignty and Liberty. The great problem of government is the satisfactory reconciliation of authority and freedom.[1] Upon its solution both individual welfare and the state's existence depend. The ideal condition requires a sphere of civil liberty sufficient to secure individual interests, and a government whose commands are definitely expressed and authoritatively enforced. At the same time there must be the minimum amount of friction between government and citizen, in order to maintain the stability of the state. Various political methods and devices have been tried in the effort to combine authority and freedom ; but frequently they have degenerated into the extremes of despotism or anarchy, and the state, from stagnation or revolution or conquest, has perished. The system that thus far has been most satisfactory places sovereignty and liberty in the same hands ; that is, it gives the mass of the people not only a sphere of freedom but also a share in authority. Thus they, directly or indirectly, as government, create and enforce the rights which they possess as citizens—in a word, they govern themselves. The democratic state, with as great a degree of civil liberty as the general good permits, seems to be the most satisfactory form of political

[1] J. W. Burgess, *The Reconciliation of Government with Liberty.*

life for those peoples who are competent to manage their public affairs.

1. *Democracy and despotism.* Only after long experience has mankind reached even an imperfect solution of the problem of government. Internal order was secured by the powerful organization of the Roman Empire ; but the absence of representation and local self-government created a great gap between government and citizen and destroyed liberty. After the fall of Rome anarchy prevailed ; and it took a thousand years to restore political organization and authority. By the sixteenth century government was again powerful, but a conflict of interests between king and people still prevented liberty. Increasing political consciousness on the part of the people led them to demand civil rights and a share in government. By gradual development or by revolution, constitutional, representative democracy was created. It was soon realized that people needed protection against their representatives and against their own hasty prejudices. For this purpose authority was divided among various departments of government to prevent each from becoming too strong and to prevent hasty action. In addition, by widening the suffrage, by frequent elections, by referendums, and by local self-government, the mass of the people retained a direct share is political power. Finally, by written constitutions, frequently difficult to change, stability of organization was secured ; and, by bills of rights in the constitutions, a sphere of individual freedom was created into which the government was forbidden to enter. In this way modern states attempt to reconcile sovereignty and liberty. Political and civil rights are widely extended, and the conflict between authority and freedom is avoided, since rights are created and enforced by the authority of the people who possess them.

2. *Individualism and paternalism.* Two questions are of paramount importance in state life: (1) Who shall govern the state? (2) How much authority shall the state exercise ? The first is the problem of state organization and depends upon the distribution of political rights. The second is the problem of state function and involves the nature and extent of civil rights. Extremes in either case are dangerous. In its organization the state

must avoid such restriction of political rights as creates despotism, and such extension of political rights as creates incompetent mob rule. In its functions the state must avoid such excess of civil rights as destroys authority and creates anarchy, and such limitation of civil rights as leads to excessive paternalism. Each state must work out these adjustments on the basis of its own conditions and the nature of its own people, and must be constantly vigilant to make new adjustments as conditions and people change. Modern opinion differs widely on both the questions above. On the problem of state organization and political rights, opinion shades off from those who believe in wide democracy to those who prefer government by the efficient and able few. On the problem of state function and civil rights, opinion varies from those who desire an extreme individualism to those who argue for extensive state socialism.

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CHAPTER XI

LAW

OUTLINE

Definition of Law
Development of Law
1. Causes of Change
    a. Conquest
    b. Interpretation
    c. Codification
    d. Administration
    e. Legislation
2. Sources of Law
    a. Customs
    b. Judicial decisions
    c. Scientific commentaries
    d. Legislation
        (1) Nature of legislative authority
        (2) Nature of law

Basis of Modern Law
Modern Schools of Jurisprudence
1. Analytical
2. Historical
3. Philosophical
4. Comparative
5. Sociological

Classification of Law
1. As to the nature of a right
    a. Persons
    b. Things
    c. Facts
        (1) Acts
        (2) Events
2. As to the method of creation
    a. By constitution amending bodies
    b. By representative legislatures
    c. By the electorate
    d. By executive and administrative organs

- *e.* By the courts
- *f.* By the treaty-making power

3. As to the relations governed
   - *a.* Private law
   - *b.* Public law
     - (1) Constitutional law
     - (2) Administrative law
     - (3) Criminal law and procedure
   - *c.* International law

Law and Morals

Definition of Law. In ordinary usage the term "law" is applied to any principle that is fixed, or uniform, or generally followed. It is often applied to the sequence of cause and effect observed in the world of natural phenomena. Thus, we speak of the law of gravitation, or of falling bodies, or of chemical reaction. The universe is ruled by a vast system of laws which work inflexibly, inviolably, and regardless of human will. Again, the term "law" is applied to rules for the guidance of human conduct. If these are concerned with motives and internal decisions of the individual will, they are called moral laws. If they refer to outward acts, they may be either social or political. Social laws are expressed in custom, tradition, fashion, and common usage. They are enforced by public opinion, and their violation is followed by ridicule or social disapproval and ostracism. If they are the rules of particular associations, violation may be followed by loss of membership in the association. Political laws are created and enforced by the authority of the state, and their violation is followed by penalties politically determined and applied. It is law in this latter sense alone, usually known as *positive* law, with which political science deals. It considers law as a command issued by the state and enforced by its authority, a general rule of external action enforced by a sovereign political authority.

A further analysis of law in this political, or positive, sense will more clearly establish its nature. As indicated in the discussion of sovereignty,[1] creation and enforcement of law form the method by which states manifest their sovereignty in its inter-

[1] See above, Chap. IX.

nal aspect Accordingly, no legal restriction can be placed on the lawmaking authority of the state, and, conversely, no authority except the state can create law. This seems clear enough when applied to law formulated by legislation, since in that process a definite state organ is seen deliberately expressing the state's will. Some difficulty is met, however, in applying the idea of positive law to those customs that are enforced by the courts ; and this fact has led some writers to deny that law is always created by a definite sovereign body in the state. They assert that custom and popular consent, as well as definite political authority, create law. Other writers assert that the laws of God, or the fundamental principles of justice which are embodied in natural law or which result from the social nature of man, are law regardless of the action of the state. They argue that law in this sense is older than the state and that the authority of such law is independent of the state and superior to it.

In the main these objections result from confusing the sources from which legal principles have sprung and the sanction that enforces them. It is true that custom was for a long time the only source of law, and is still an important influence. The pressure of public opinion and generally accepted principles of justice are important in determining the content of law. At the same time, the principles handed down by custom or embodied in generally accepted moral ideas do not become law, in the political sense, until they are sanctioned by the state. Some definite, human, political authority must interpret these rules and must place the sanction of the state behind them in order to make them law. The only source of laws, in the sense of that which impresses upon them their legal character, is recognition by the state, which may be given expressly through lawmaking bodies or the courts or tacitly by allowance, but is followed in the last resort by political enforcement. Law, therefore, is that portion of established thought and habit which has gained distinct and formal recognition in the form of general rules backed by the authority and power of government. Only those rules which the state creates or which it recognizes and enforces become law.

The sanction of the state is, then, the distinguishing characteristic of law. The fact that some laws fail of enforcement does not destroy their character as law. Because of popular resistance the executive branch of government may deem it inexpedient to enforce certain laws. Juries may refuse to convict persons who are clearly guilty of legal offenses. In this case the whole law must be taken into consideration, which is that a person guilty of a crime and convicted by a jury shall be punished. If the jury fails to convict, one of the legal elements necessary for the infliction of punishment is lacking. Moreover, all laws are equal in validity. Each law-making organ, acting within the sphere of its legal competence, shares in exercising the sovereign power of the state. The sum total of these bodies compose the sovereign ; the sum total of the rules they create forms the law of the state. An ordinance issued by some minor department is, if the issuing body has a legal right so to act, as truly law as a statute of the national legislature or an amendment to the constitution. When a law is declared unconstitutional it is not meant that the law, conflicting with a superior law, is annulled ; but that, created by a body acting outside the scope of its legal powers, it never was law. Law, therefore, is the command of an authorized public organ acting within the sphere of its legal competence and in the method legally prescribed. This views every state as completely organized in its government and gives a clear-cut meaning to sovereignty and law.

The universality of law and its coercive sanction make it desirable that law should deal with general situations. It cannot accommodate itself to all the intricacies of individual life. It should embody standing principles. By its nature it is a formal and somewhat clumsy instrument of control. Many interests can be better regulated by other means than the law. Custom, tradition, and the rules of other associations should be left a wide field to deal with affairs for which they are better fitted than the state. Neither should the state put into law rules of conduct unless they are supported by a wide consensus of opinion. The attempt of a minority to coerce a majority or of a bare majority to coerce a large minority is certain to result in difficulty of enforcement, if not in revolu-

tion. The very nature of the state limits what it can successfully do. Because it is legally supreme does not mean that it should exercise omnipotent legal power. The state exists to maintain the universal external conditions of social order and to regulate human actions in the interests of general social welfare. To this end it is endowed with coercive power, and for this purpose it should make law.

Development of Law. A historical survey of the manner in which legal principles have developed will add clearness to our knowledge of state evolution and will further explain the nature of law In the static civilizations of early times law was viewed as something permanent and immutable, like the "law of the Medes and Persians, which altereth not,"[1] or the customs of England traced back to the "time whereof the memory of man runneth not to the contrary."[2] The conservatism of tradition and the belief in divine sanction gave a fixity to law which made change difficult.

1. *Causes of change.* But no set of customs is satisfactory to the needs of a changing civilization ; hence old laws required modification, and new laws had to be created. Such changes were accomplished mainly by the following means :

a. Conquest. The mingling of customs resulting from conquest and subjugation resulted in the suppression of some and the modification of others. This process of assimilation took place wherever various peoples came into contact.

b. Interpretation. New generations do not always interpret old customs in the same way as their ancestors, and those who enforced the accepted traditions frequently exercised discretionary powers that modified the earlier rules. Legal fictions of various kinds were often created to modify ancient laws that worked injustice. The opinions of learned men who made a special study of the law were given particular weight in its interpretation. When a special judicial department arose, its decisions became of prime importance in interpreting the law, and the courts became in actual fact lawmaking bodies. They

[1] Daniel vi, 8.
[2] Blackstone, *Commentaries*, Int., Sect. 3.

adjusted the existing law to individual cases and found new legal principles for cases where no law existed.

c. Codification. When written law replaced the earlier traditional, customary rules, codes were often drawn up. Sometimes these were intended to make the law more definite, sometimes to reconcile the conflicts of rival interests and customs, sometimes to adjust the law to changing conditions in the state, sometimes to harmonize the conflicting rules and interpretations that had accumulated during a long period. For whatever reason created, the great codes of law modified the earlier legal system by the omission or alteration of earlier rules and by the addition of new provisions. The jurists who prepared the code consciously or unconsciously wrote many of their own legal ideas into it. Once made, the code acquired a certain sanctity, and further development took place through its interpretation.

d. Administration. With the growth of governmental machinery, the executive department developed a power that amounted to the formulation of new law. By issuing decrees and ordinances, the heads of the state filled in the details of law and adjusted it to new conditions. Dictators, set up in time of war or crisis, frequently found it necessary to break with the old customs and to formulate new regulations. In this way executives gradually assumed the right to modify ancient customs and to make new laws when needed.

e. Legislation. In the fully developed state a special lawmaking organ appears which no longer pretends to interpret existing law, but which boldly proclaims that it is formulating new law. With the growth of its powers the old idea that the law is a fixed system was replaced by the idea that the duty of the state is to create new law whenever social needs demand it. Legislation became the chief function of the state, and this process of lawmaking gradually superseded all the others. The executive and judicial departments, more important in the earlier states, were reduced to the position of agents of the legislature, which to a large degree exercised the sovereign power of the state.

2. *Sources of law.* The foregoing summary of the methods by which early law was changed and expanded suggests some

of the sources from which legal ideas have been derived. These may now be outlined as follows :

a. Custom. Rules of conduct resting upon general acceptance, resulting either from accidental habits, from evident utility through successful experience, or from general desire for order and justice, were the only laws known in early states. Evidently no direct action of the state was involved in the creation of such rules ; they grew up through common usage and acceptance. As long as social relations were simple, and common interests few, all knew and followed the accepted customs, which were handed down through oral tradition by the elder members of the group. To the sanction resulting from immemorial custom was often added religious authority, since law and religion were not distinguished, and all rules were supposed to have a supernatural sanction. Many of the customs grew out of religious practices, and superstitious fear of angering the gods or of arousing evil spirits gave powerful support to all early rules.

b. Judicial decisions. Under changing conditions, such as resulted from new environment, new methods of life, or contact with other peoples, several difficulties arose. Numerous controversies led to doubts as to the relative validity of conflicting customs, and many cases arose concerning which custom furnished no rule. The evils of uncertain public opinion and the injustice of the strong, when customary rules were absent, led to an additional source of law, namely, adjudication, or judicial decision. The state arose not as the creator of law, but as the interpreter and enforcer of custom. Disputed points were referred, naturally, to men of recognized importance, to those who were supposed to know the rules and who had authority to enforce their decisions In this way the chief or priest, as magistrate or judge, supported by the force of the community, inaugurated political power. While, in theory, each disputed point was decided on its merits by the application of long-standing custom, in several ways the decisions created new law. In deciding similar cases, general rules were established, precedent was followed, and, either unconsciously or deliberately, the law was modified and expanded. Under changing conditions former customs worked

injustice, and decisions often created new rules by means of new interpretations or legal fictions. Finally, where no rule existed, general principles of justice, or equity, were applied still under the guise of judicially interpreting laws already in existence. The decisions of the Roman prætor and of the English chancellor were examples of law thus created. In these ways, as social life developed, the strictness and rigidity of old customs were modified, the functions of the state were expanded, and its authority was made more definite in expression and more certain in enforcement.

c. Scientific commentaries. The writings of great jurists have sometimes contained legal principles which have been incorporated into the law. Lawyers and judges attach importance to their carefully considered opinions. The influence exercised by the jurisconsults in Rome, and by Coke, Blackstone, and Kent in modern times, are examples. Unlike judges, whose decisions apply to particular cases, the commentators deal with abstract principles ; and what lawmakers and courts deal with in piecemeal fashion legal science views as a complete system capable of scientific treatment. By collecting, comparing, and arranging in logical form past customs, decisions, and laws, writers on law are able to arrive at general principles which may serve as the basis for further enactment, to indicate the gaps that need filling, to point out discrepancies, and, in so far as their ideas are enforced by the courts, to create law.

d. Legislation. The declared will of the state in legislation is the chief source of law in modern states, and is tending to supplant the other sources. Customary rules and general principles of equity are being incorporated into definite legislative enactment, codification of laws narrows the field of judicial decision, and the commentaries of jurists are used mainly as a basis for more scientific legislation. Rigid custom, which sometimes caused ancient states to stagnate, has been replaced by a zeal in lawmaking which sometimes threatens to go too far in the other direction. At the same time, the earlier sources still serve as checks against overlegislation. Custom and habit prevent too radical changes. Laws no longer

needed become obsolete, usages grow up outside the legal system, interpretation by the courts gives attention to the precedents of the past, and public opinion constantly influences both the formulation and the administration of law. Past tradition, as well as the needs of the present, affects the creation of law.

In the development of legislation several lines of growth may be noted :

(1) *The nature of legislative authority.* At first, magistrates and priests alone could create law. Representing the majesty of the state or the power of God, the father of the family, the chieftain of the tribe, the chief priest of the religion, or the king of the people was the lawgiver. In the Roman Empire the will of the Emperor was the source of law ; when modern national states arose their kings claimed the same prerogative. During this process, however, assemblies of freemen, whose consent and support were needed on important questions, gradually established themselves as part of the government, and by various methods secured the right to indorse and finally to initiate new laws. The assemblies in Greece and in the Roman Republic, as well as the early Teutonic folkmoots, represented this stage. Finally, the system of representation, begun in England, furnished a device that enabled the growing idea of popular sovereignty to manifest itself effectively ; and in modern states legislation is controlled by popularly elected representative bodies or sometimes by the direct action of the voters themselves.

(2) *The nature of law.* For a long time the lawmaking powers of government dealt almost entirely with public law, adjusting the relation of citizens and state, and leaving the regulation of the private interests of individuals to custom and the judiciary. Only gradually, even after representative assemblies arose, did they attempt more than a general control of public administration. However, as the basis of representation widened, and the people, in their growing political consciousness, realized their power, it was inevitable that, through their representatives, they should enter on a constantly expanding field of legislation. Private as well as public interests were regulated, other lawmaking bodies with delegated powers were

created, and the present enormous legislative activity was begun. The growth of popular representative government and the idea that the state manifests its sovereignty in detailed legislation are closely interrelated.

Basis of Modern Law. Although great legal systems and codes were created by the early Oriental empires and still hold sway in certain parts of the earth, the law that governs the Western civilized world arose from a fusion of Roman and Teutonic polity after the barbarian invasions of the fifth century. The legal ideas of the Teutonic tribes showed marked contrasts to those of Rome. The chief difference may be summed up as follows : To the Romans, law meant the commands of the state issued through its officials ; among the Teutons immemorial custom of popular origin was law. Roman law was based on allegiance to the state ; Teutonic law rested on personal allegiance. Over the Roman Empire a uniform law was enforced on all citizens ; among the Teutons, law was a personal possession, differing from tribe to tribe, and taken as a part of his belongings wherever its owner might go. Roman law was written and was finally crystallized in the great Justinian Code ; Teutonic law was largely unwritten, and was handed down in the popular tradition or was found in the decisions that had been given in disputed cases. To the advanced but rigid Roman code the Teutons therefore contributed new elements and the possibility of further growth. The immediate result of contact was legal confusion. Numerous systems, often contradictory, existed side by side. The Teutons, retaining their customs, made little effort to destroy the old laws of the Empire, and allowed the conquered Romans to continue under their own law. In additions, by the canon law of the church and the local regulations of manor and guild, legal ideas, as to both sanction and content, were further complicated.

Gradually, however, Roman methods systematized this confusion, and the unity of Roman law gradually prevailed over the multiplicity of Teutonic customs. With the advent of feudalism, the idea that law had a personal basis, the son following the law of his father, was changed to the principle that law had a territorial basis, all persons living in a given area coming under the same law. Various causes aided in

establishing the supremacy of Roman legal ideas in the process of amalgamation. The prevalence of Latin as the speech of education and of government furthered the acceptance of Roman legal ideas. To this process the influence of the church was added. In organization and spirit it was Roman. It had a well-developed system of canon law and courts; and by its control over education it furnished the advisers of rulers and the compilers of legal codes. Its authority was therefore cast on the side of Roman methods, particularly in family relations and inheritance. The reverence for Rome as typifying supreme and universal dominion, the theory that the Holy Roman Empire survived, and the efforts of Charlemagne and later rulers to revive the imperial title, led to the adoption of Roman principles in government and to a revival of Roman legal ideas.

During the Dark Ages various codes, containing in the main Roman principles, were drawn up at the command of barbarian leaders. Of these the most important was the code of the Visigoths, known as the Breviary of Alaric. This compilation, prepared early in the sixth century, remained the chief source of Roman law for Europe until the general awakening of the mind in the eleventh and twelfth centuries. About that time, in the Italian cities, where population was mixed and trade vigorous, need arose for more comprehensive regulation. In the great compilation of Justinian was found a system suited to the needs of the time, and schools were rapidly established for its study. Starting in the University of Bologna, in the latter part of the eleventh century, interest in Roman law spread to other Italian cities, thence to France and Spain, and later to Holland. Even in England the study of Roman law obtained for several centuries. From these schools lawyers steeped in Roman ideas returned to their homes and, supported by the kings, whose desire for centralization they favored, gradually replaced customary rules with Roman principles and procedure.

As the countries of continental Europe arose from feudalism, Roman law increasingly served as the basis for their national unity. Attempts to establish centralized authority and to enforce the king's law as the law of the land; the growing in-

fluence of the king's courts and lawyers, trained in Roman law, as the popular courts decayed ; and the influence of the church—all tended in the same direction. Everywhere evidences of fusion may be found, but in general the legal system of continental Europe rests on Roman jurisprudence. A most direct influence was exerted by the Code Napoleon (1804). This consisted of the ancient customs of France, of Roman-law maxims, and of the principles and legislation of the French Revolution, revised and harmonized by a commission of eminent French jurists. By French control and influence this code was introduced into Holland, Italy, Spain, and many of the German states. Austria and Prussia imitated it, and from Spain it spread to Spanish America.

England, separated geographically from the continent of Europe and possessing, from the Norman Conquest, a centralized administration, was able to work out a uniform legal system based on Teutonic customs. English law was indigenous to the country and had a continuous historical development. It grew up gradually from the customs and habits of the people. For a long time definite legislation was uncommon, although the customs of the country were put into written codes by several early rulers.[1] The great body of law was unenacted custom, or "common law," and was handed down in the decisions, first, of the popular local courts, and, later, of the more powerful national courts of the king. By their decisions the varying local customs were unified into a uniform system of law for the entire country. Lawyers and judges, working over the legal ideas that grew up from custom and habit, created the English legal system. Its principles were fixed in a multitude of recorded cases. Only in the last two centuries has the supremacy of Parliament made statute law an important element in English jurisprudence.

Even in England the influence of Roman law was felt. For four centuries England was governed as a Roman province ; later, Roman law was taught in her universities, and many precepts and methods were brought from Rome through the church. While the Crown sometimes preferred the Roman

[1] Æthelbert's Code, about 600 A.D. ; Code of Alfred the Great, in the ninth century A.D. ; Code of Canute, in the eleventh century A.D.

system, because it was suitable to national centralization and royal authority, nevertheless the English courts were able to preserve their independence of the king through the support of the nobles and the commons, and with the aid of the king, who did not favor the growing power of the church, were able to restrain the ecclesiastical courts. Gaps in the law, resulting from the development of the times, were filled by judicial decisions. At first these served merely as guides for later decisions, but they finally became compulsory precedents, or judge-made law. The power of the judiciary was thereby increased, and the judges were led to be careful in the form of their judgments and to give reasoned statements for their conclusions. In contrast to the Roman system of the Continent, where judges decided each case by applying the principles of the written code, and where a decision was not an authoritative precedent for future decisions, the customary, or common-law, system of England gave the judge a wider discretionary power in interpreting the customary rules and in applying general principles of justice. Besides, a decision once made became law ; hence the body of the law was not found in a written code, but in the decisions in past cases. From England the common-law system spread to her colonies, and is found today in the United States and in the British dominions. With the growth of legislation and the tendency to codify legal rules, the importance of judge-made law is declining somewhat in the English-speaking countries.

It should be noted, also, that important Hebraic elements have been introduced into modern law, particularly at two periods. During the Middle Ages the union of church and state and the important governing functions that the church performed resulted in a considerable mingling of Christian theology with politics. Again, after the Reformation, Protestant ideas, particularly those of the Puritans, were infused into politics and influenced the growth of modern democracy.

In conclusion, it may be noted that, as European law developed, Teutonic principles predominated in public law ; Roman principles, in private law. The Teutons, as conquerors, formed their governments on the basis of those customs with which

they were familiar, laying the foundations for local self-government and representation. Even where Roman ideas were adopted later, these elements were never completely destroyed. On the other hand, Roman law was chiefly applied to the relations among individuals. It was in this department that Rome had most perfectly developed her system ; and its superiority was soon recognized by the invading Teutons. In municipal and colonial administration also the influence of Rome was powerful. With these the Teutons were not familiar, and their customs were accordingly silent. On the contrary, Roman ideas remained least changed in the towns ; and toward the close of the Middle Ages, when city life again became important, Roman municipal government reappeared. Later, when colonial empires were formed, it was again to the experience of Rome that the states of Europe turned. Finally, many survivals in political point of view may still be observed, distinguishing those states whose jurisprudence is predominantly Roman from those whose legal ideas are fundamentally Teutonic ; and these differences can be explained mainly by the historic development of their respective legal systems.

Modern Schools of Jurisprudence. The study of jurisprudence, or the science of law, may be approached by different methods, depending upon the point of view and the emphasis desired. Among the most important modern schools of legal study are the following :

1. *The analytical.* The method of the analytical jurists is based on the absolutist and idealistic philosophy that came down through Plato, Thomas Aquinas, and Kant, and found its political expression in Bodin, Hobbes, Bentham, and Austin. Recent writers who follow the analytical method include T. E. Holland[1] in England and W. W. Willoughby[2] in the United States. This school seeks to explain the law as it is, examining its content critically in order to discover its fundamental principles and theories. It pays especial attention to clear definitions and to logical distinctions. It emphasizes legislation as

[1] *The Elements of Jurisprudence.*

[2] *The Nature of the State* and *Fundamental Concepts of Public Law.*

a source of law, views lawmaking as the deliberate and conscious command of the state, and insists on the absolute and unitary nature of the state's sovereignty. Analytical jurists see chiefly the force behind legal rules. To them the sanction of law is enforcement by the state. Nothing that lacks a legal enforcing agency is law. This method is more applicable to individual systems of law than to a comparative study, and to highly developed systems of law than to more primitive forms. Analytical jurists tend to regard the law as static rather than progressive, and they are not interested in its historical evolution. As a result, they have sometimes reached absolute conclusions without examining an adequate amount of material. While this method has been much criticized as being too formal and rigid, it has, nevertheless, by its clear-cut analysis, improved the law by removing inconsistent and ambiguous elements ; and, by its association with the utilitarian theory of the greatest happiness of the greatest number, it has reformed the law in the interests of general welfare.

2. *The historical.* The historical school of jurists draws upon the Hegelian philosophy of a fixed ideal but constantly evolving details. Its point of view is retrospective. It studies the origin and development of law, investigates the causes of change and growth, and views the law as the resultant of the forces and influences of the past. From this point of view, law is not the deliberate creation of a lawmaker, but the result of the slow development of society through many centuries. The chief exponents of this doctrine were Savigny in Germany and Sir Henry Maine,[1] F. W. Maitland, and, more recently, Sir Frederick Pollock in England.[2] While this method overemphasizes legal history and undervalues legal philosophy, and tends to be conservative because of its reverence for the past and its distrust of deliberate efforts at reform, it has contributed elements of value. It furnishes the background for legal analysis, and it points out that legal systems are constantly changing and need modification to meet new conditions.

[1] *Ancient Law* (1861).

[2] Pollock and Maitland, *History of English Law* (1898).

3. *The philosophical.* The jurists of the philosophical school are interested in the law as an abstraction, rather than in the actual law of the past or present. Their concern is with the development of the ideas of justice as an ethical principle and with the creation of an ideal system of law. In the eighteenth century they believed in a law of nature which could be discovered by human reason. In the nineteenth century they were interested in metaphysical discussions of existing laws and in attempts to create perfect law through codes and legislation. In the twentieth century they gave chief attention to social interests and ideals and to the formation of theories of social justice. The leading modern exponent of the philosophical method was Professor Joseph Kohler,[1] in Germany.

4. *The comparative.* The comparative study of jurisprudence is an expansion of the historical method ; its exponents believe that by examining and comparing all legal systems and practices, past and present, they can arrive at more reliable generalizations than can be obtained otherwise. This method draws largely on the other social sciences for material, and was much influenced by the developments of the second half of the nineteenth century in Darwinian biology, in comparative philology, and in anthropology. While the program of this school is ambitious and much remains to be done, it has made valuable contributions to our knowledge of the nature of law. One of the leading exponents of this method was Sir Paul Vinogradoff[2] of England.

5. *The sociological.* The most recent school of legal investigation includes a group of jurists who hold divergent views on many points, but who are in agreement on certain fundamental principles. The sociological jurists draw largely on modern developments in psychology and sociology and on the practical philosophy of pragmatism. They believe that law is the product of social forces and should serve social needs. They are concerned with the administration of law as well as with the method of its creation, and believe that the law should be

[1] *Philosophy of Law*, trans. by Albrecht.
[2] *Outlines of Historical Jurisprudence.*

judged by its results, rather than by abstract theories. They approach the study of law by examining the social ends which the law is intended to serve. They broaden the relation of law to the other social sciences and attempt to create a general social theory. In contrast to the analytical jurist, who found the sanction of law in the command of the state, to the philosophical jurist, who found its sanction in its inherent justice, and to the historical jurist, who found its sanction in established habit and custom, the sociological jurist finds the sanction of the law in the social needs and interests that it serves. This school attacks the idea of a sovereign state as a creator of law, and views the state rather as the organization which imputes legal value to the rules that grow out of and best promote social interests. Law in this sense exists outside of and is of superior validity to the authority of the state itself. Among the leading representatives of this school are Gumplowicz in Austria, Duguit[1] in France, Krabbe[2] in Holland, and Roscoe Pound[3] and Justice Holmes in the United States.

Classification of Law. The content of law may be classified from various points of view. Among those which bring out most clearly its essential nature, and which throw additional light on the nature of the state and of sovereignty, are the following :

1. *As to the nature of a right.* When laws are applied to individuals, it is seen that the state sanctions only such acts as are in accordance with its will, as expressed or tacitly implied, and punishes, or at least nullifies, acts contrary to its will. In other words, the state announces what it will protect as legal rights, and what it will enforce as legal duties, and what method it will use is doing so. The maintenance of rights, with their corresponding obligations, is, therefore, the purpose for which law exists. That law which creates rights is called *substantive* law, while that law which provides a method of protecting rights is called *adjective* law, or *procedure.*

[1] *Law in the Modern State.*

[2] *The Modern Theory of the State.*

[3] *Introduction to the Philosophy of Law* ; "Scope and Purpose of Sociological Jurisprudence," in *Harvard Law Review*, June, 1911-April, 1912.

The nature of a legal right has already been discussed.[1] There remain to be considered its component elements, which are the following :

1. The person or persons who possess the right or who are benefited by its existence.

2. The object, if any, over which the right is exercised.

3. The acts or forbearances which the person possessing the right is entitled to demand.

4. The person or persons from whom these acts or forbearances can be exacted or whose legal duty it is to act or forbear.

In this series two terms are persons—one entitled to the right, the other obliged by the right. The other terms may be called the thing and the act. When a right is put into operation, events may occur which are independent of the persons directly concerned and which yet affect the right.

The final analysis of a legal right, therefore, shows :

a. Persons. Either human beings, called natural persons, or groups of human beings or masses of property to which the law gives rights and duties, called artificial persons. Corporations and the state itself are examples of this latter class.

b. Things. Either material objects, such as real and personal property, or intangible objects, such as a patent, a copyright, a franchise or a person's reputation.

c. Facts. These may be :

(1) *Acts.* Deliberate outward actions or deliberate forbearances from action on the part of the persons affected by the right.

(2) *Events.* Movements of external nature or the acts of persons other than those concerned with the right.

This analysis of a right opens up the whole field of law and serves as the basis for its division into (1) law of persons and (2) law of things, which some writers, such as Austin and Blackstone, considered the fundamental classification of law. It also suggests the method of court procedure, the person whose right is violated becoming the plaintiff in the case, and the person who violates the right becoming the defendant.

[1] See above, Chap.X, pp. 150-151.

2. *As to the method of creation.* In modern states, with their elaborate governmental machinery, many organs share in the creation of law. A classification of law from this point of view indicates the distribution of sovereign powers within the state. In the United States, for example, law may be made in the following ways ;

a. By constitution-amending bodies. Special organs of government or special methods of procedure are required, both in the nation and in the commonwealths, to make or change the fundamental principles that create the government, outline the scope of its powers, and prescribe the method of their exercise. These principles form the basic, or fundamental, law.

b. By representative legislatures. These include the national Congress and the state legislatures, which make law in the form of statutes ; and the local councils, which make ordinances. The executive may share to some extent in the lawmaking powers of legislatures through the veto. The greater part of modern law is made by these bodies.

c. By the electorate. The voters share in lawmaking in some of the American commonwealths by means of the referendum. This may be applied to laws submitted to them by the legislature or to laws which they originate by initiative petitions.

d. By executive and administrative organs. Executive heads, department heads, and administrative boards and commissions exercise a limited lawmaking power in the proclamations, orders, and regulations which they issue.

e. By the courts. The courts make law when they give decisions based on customs or on principles of equity not previously put into law ; when, by interpreting the constitutions or laws, they actually change their formerly accepted meaning ; and when, by injunctions, they forbid something which would otherwise be legally permissible.

f. By the treaty-making power. The president, with the consent of two thirds of the Senate, makes treaties, which, once made, become part of the law of the land.

3. *As to the relations governed.* The relations with which the state is concerned include those of person to person, person to

state, and state to state. On this basis law may be divided into the following classes :

a. Private law, which regulates the relation of person to person.

b. Public law, which regulates the relation of person to state.

c. International law, which regulates the relation of state to state.

In private law both parties concerned are private persons, natural or artificial, while the state occupies the position of arbiter. It creates the law that applies to the case, and is expected to enforce it impartially, thus securing to each person his rights against other persons. The state does not attempt to regulate all the relations among persons, but only those which in its opinion are of such public importance as to need legal regulation. This covers the field of civil rights which the individual enjoys against interference from other individuals. Among the most important subdivisions of private law are the laws of property, of contracts, of corporations, of personal relations, of torts, and of civil procedure.

In public law the state is, through some part of its government, one of the parties to the right created by the law, at the same time being the power that creates and enforces the law. If individuals are the offenders, the state may, of course, protect its rights. But if the state is the offender, the individual may protect his rights only with the consent of the state, since no rights can be enforced against the state. Public law deals with the organization and functions of the state and with its relation to its citizens. It includes the whole field of political rights, and that part of the field of civil rights which the individual enjoys against governmental interference. Its most important subdivisions are :

(1) *Constitutional law*, which defines the organization of the state and outlines the scope and manner of exercise of governmental powers. In a word, it locates sovereignty within the state and thus indicates the source of all law.

(2) *Administrative law*, which defines in detail the manner in which the government shall exercise those powers that were outlined in constitutional law. Or, in a narrower sense, it is that part of the public law which fixes the organization and

determines the competence of the organs that administer the law, and indicates to the individual remedies for the violation of his rights.

(3) *Criminal law and procedure.* In maintaining order the state considers certain offenses, which affect public welfare and security, as offenses against itself. That branch of law which defines and forbids the acts that infringe upon the rights of the state and provides penal consequences is called criminal law. That body of rules defining the method in which the machinery of the state is set in motion to punish offenders is called criminal procedure.

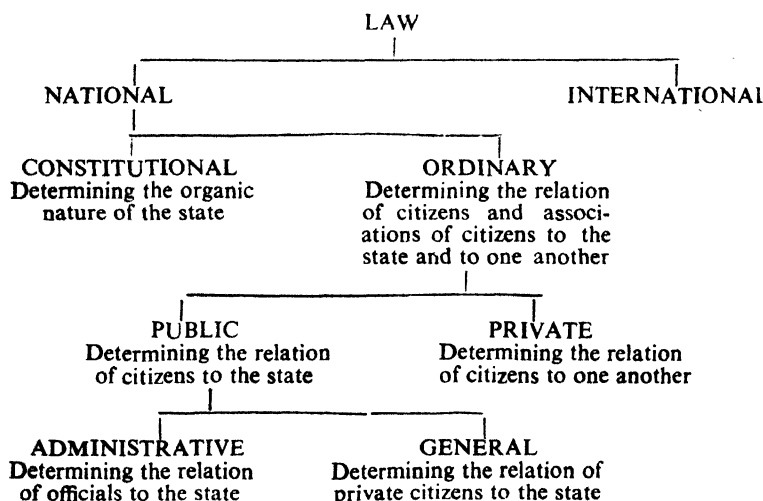
The idea of criminal law is comparatively modern. At first, offenses against the state, such as treason, were dealt with by special laws ; and offenses against individuals, even if they threatened general welfare, were considered as private acts, to be avenged by individuals or compensated for by money payments to the injured parties. The state, entering as the arbiter that enforced fair play, later came to consider certain acts, such as murder and theft, as offenses both against other individuals and against itself. With this came the idea that it was the duty of the state to prevent and punish such offenses. A crime, therefore, is legally an offense against the state, which appears as the prosecutor in the case. If money payment is allowed as compensation for a wrongful act, or tort, in private law, it goes, in the form of damages, to the injured person. If money payment is imposed as a penalty for a criminal offense in public law, it goes, in the form of a fine, to the state.

Public and private law, taken together, are called *municipal* law,[1] and are characterized by the presence of an enforcing authority. They result from the internal sovereignty of the state, and form law in the positive sense. In public law the state is both an interested party and the enforcing authority ; in private law the state is the enforcing authority only. In contrast to these laws, which regulate the relations of man to man and of man to state, stand the rules that regulate the relations of state to state, called *international law.* These are concerned with the external sovereignty, or independence, of

[1] The term "national law" would be preferable.

states. They are not created by a sovereign lawmaking authority, nor is there any sovereign power to enforce them on states that refuse to obey. They do not form positive law, differing from it both in the method by which they are created and in the sanction that enforces them. Those who hold a strict Austinian theory of sovereignty deny that international law is law ; those who hold a less rigid theory consider international law as law by widening the definition of the term "law."

The following classification outlines the field of law from the point of view of the relations governed by it.[1]



Law and Morals. Law and morals, while closely related, must be clearly distinguished. The difference in sanction has already been indicated. Moral rules are enforced by individual conscience or by the pressure of public opinion. Law is enforced by the power of the state. There is, however, a difference in content as well. Morals deal with the whole life of man, his thoughts and purposes as well as his actions. Law is concerned with outward acts, though in applying the law to individual cases some attention is given to motives. Of these outward acts the law attempts to control only such as affect

[1] See R. M, McIver, *The Modern State*, p. 290. With permission of the publishers, Clarendon Press, Oxford.

the welfare of man in society and as can be brought under uniform and practicable regulation. It necessarily follows that many things considered morally wrong are not prohibited by law. Falsehood may be immoral, but only certain kinds of falsehood, such as perjury and slander, are illegal. Ingratitude, jealousy, meanness, are indications of bad character, but do not come under the cognizance of law unless actual injury to others can be proved. On the other hand, law often follows standards of expediency, and things not considered morally wrong are forbidden by law. Whether one drives on the right or the left side of the street involves no moral issue—merely the necessity that there should be some rule which can be depended upon to avoid confusion. Some laws may even offend the moral sense of many persons and be considered by them unjust and undesirable. Laws permitting amusements on the Sabbath or legalizing prize fights are examples. There is, therefore, a legal conscience as well as a moral conscience, and the two do not always coincide. Some persons prefer to be martyrs to the law rather than to forsake their moral opinions ; others disregard morality so long as they can keep on the safe side of the law.

There is, nevertheless, a close connection between law and morals. In origin they were identical, both arising as the result of habit and experience in that primitive social life when moral and political ideas were not separated. Even after the state became a distinct institution, and laws, as definite sovereign commands, were distinguished from moral precepts, points of contact remained. Widespread ideas of right and wrong, representing prevalent ethical standards, always tend to be crystallized into law. To be effective, law must represent national habits and beliefs. Laws that attempt too soon to force new moral ideas, and laws that are no longer in touch with existing ethical standards, are alike difficult to administer. The nonenforcement of prohibition legislation is an example of the former ; certain ancient, but unrepealed, laws concerning Sabbath observance illustrate the latter. In this sense law marks time to moral progress. There is always a mass of public opinion clamoring for legal expression, and there is also a body of law becoming obsolete because inapplic-

able under existing conditions. While law may be used to a limited extent to modify and improve ethical standards, only such law as has the support of general moral sentiment will be respected and obeyed, or, if necessary, efficiently enforced.

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PART III THE ORGANIZATION OF THE STATE

CHAPTER XII

FORMS OF THE STATE AND OF GOVERNMENT

OUTLINE

Forms of the State
Forms of Government
  1. Number of persons who share in sovereignty
  2. Separation of powers
  3. Division of powers
Monarchy
Strength and Weakness of Monarchy
Aristocracy
Strength and Weakness of Aristocracy
Democracy
Strength and Weakness of Democracy
Democracy and Efficiency
Dictatorship

Forms of the State. Various attempts have been made to classify states, but these attempts have been unsatisfactory because they rest upon no scientific principle by which the fundamental characteristics of various states may be distinguished. In their nature, in their legal character, and in their primary purposes, states are essentially similar. All states contain the essential elements,—population, territory, government, and sovereignty,—so that in a strict sense a classification of states is impossible. States differ in their external characteristics, and descriptions of these differences have some value ; but they do not give a scientific basis for classification from the point of view of political science. The essential charateristic of the state is its political and legal nature. This is manifested in its governmental organization ; hence the most satisfactory classification is based on the similarities and differences of governmental forms. This results, however, in a classification of governments, not of states. If may be urged that since

states manifest their existence only through their governments, and since on no other basis can they be properly distinguished, a classification of governments is in essence a classification of states. Modern political science, however, draws a clear distinction between state and government ; hence a classification of states on the basis of government rests upon a confusion of the two terms.

On the basis of descriptive differences, which are, from the political point of view, of secondary importance, various classifications have been made. From the standpoint of population and territory, states may be arranged according to their total numbers or total area. The terms "tribal state," "city state," "feudal state," "national state," and "world empire," while in the main mere historical descriptions, contain certain ideas as to the relation of geographic and ethnic unity to state existence, and give a classification of the forms assumed by the state in its evolution. Mere size in area and population affects the form of political life ; and if differences in wealth, resources, military strength, and the influence exerted in international relations are added, states may be classified as "world powers," "lesser powers," and "petty states." From the point of view of the relative degree of external independence possessed by states, they may be classified as fully sovereign and partly sovereign states. The latter class includes protected states, neutralized states, vassal states, and similar forms. It should be noted that the term "sovereign" is used here in its external sense of independence. Other distinctions may be made between insular states and continental states ; between states whose territory is compact and those whose territory is scattered ; between military states and naval states ; between civilized states and uncivilized states ; between states whose population is growing rapidly and those whose population is increasing slowly or not at all ; between states whose financial credit is strong and those whose financial position is weak ; between debtor states and creditor states. Such classifications could be multiplied indefinitely, but they are of more value to the economist and the sociologist than to the political scientist. They overlap and shade off into one another to such

an extent that they offer no satisfactory basis for a political study of state forms.

Several eminent writers[1] have held that the best classification of states rests upon the single principle of how the will of the state is formed and expressed, that is, of the location of sovereignty within the state. On this basis the ancient classification made by Aristotle into monarchies, aristocracies, and democracies is justified. Monarchy is defined as a form of state in which sovereignty resides in one person ; aristocracy, as the form in which sovereignty resides in a small minority ; and democracy, as the form in which sovereignty resides in a large proportion of the population. Sometimes this is simplified further into monarchies and democracies, the former being the type in which there exists one supreme will, and the latter being the type in which the sovereign will resides in a group of persons more or less numerous. To this classification several objections may be urged. The basis is quantitative and numerical rather than one of principle. Aristocracy and democracy shade off into one another in such a way that a clear distinction between them is hard to make. Many states combine elements of the various forms, and any attempt to apply this classification to existing states would lead to wide differences of opinions. Finally, this classification also is in reality based on the nature of the state's organization and, except as a vague description of the general spirit of the state, is actually a classification of governmental forms.

Forms of Government. Governments vary widely in the nature of their organization, in the extent of the authority that they exercise, in the relations among their various organs, and in many other ways. For purposes of classification the essential problem is to find the fundamental bases of distinction that will be, from the political point of view, scientific in nature and of practical value. If attention is directed to the method of selecting the officials of government, it is found that many methods are combined in modern states. Heredity, though

[1] G. Jellinek, *Recht des modernen Staates*, Chap. XX ; J. W. Burgess, *Political Science and Comparative Constitutional Law*, Vol. I, Chap. III.

declining in importance, still survives in some states. Most states combine election, either direct or indirect, appointment, and competitive examination for the majority of their offices. Selection by lot is sometimes used, as in jury service ; and other devices may be found. No satisfactory classification of government can be based on this principle. From the point of view of the extent of authority exercised, governments may be considered paternalistic if they exercise wide powers of control and regulation, or individualistic if they confine their authority within narrow limits. On this point governments differ in degree rather than in kind, and a government that exercises large control over one set of interests—economic, for example—may keep its hand off other interests, such as religious beliefs or freedom of opinion. Another government may reverse this process. No satisfactory classification of governments results from this criterion.

Probably the most scientific and useful classifications of governments rest upon the following three principles :

1. *The number of persons who share in exercising the sovereign power of the state.* On this basis governments may be considered as monarchic, aristocratic, and democratic.

2. *The separation of powers*, that is, the distinction between the organs of government on the basis of the functions performed by them. While the usual classification of governmental organs from this point of view is into legislative, executive, and judicial bodies, the more fundamental distinction is that between the organs that create law and those that administer it. The nature of the relation between the legislature and the administration will divide governments into the cabinet type and the presidential type.[1]

3. *The division of powers*, that is, the distinction between the organs of government on the basis of the area over which they exercise jurisdiction. From this point of view the nature of the relation between the national government and its subdivisions will determine whether the government is unitary or federal.[2]

[1] See below, Chap. XIII.
[2] See below, Chap. XIV.

Monarchy. While monarchy is generally considered as a form of government in which the head of the state derives his office through hereditary succession, any government in which supreme and final authority is in the hands of a single person is a monarchy, whether his office is secured by usurpation, by election, or by hereditary succession. If the monarch is merely the nominal head of the state, and the actual powers of government are exercised by others, the government is in reality an aristocracy or a democracy rather than a monarchy. Strictly speaking, a monarchy exists only when the personal will of the head of the state is a constantly effective and, in the last resort, a predominant factor in government.

Absolute monarchy of this type was common in the earlier history of the state, in the Roman Empire, in the Middle Ages, in France before the Revolution, and in countries like Russia and Turkey, and, to a less degree, Prussia, Austria, and Hungary until well into the nineteenth century. It survives today only in a few backward states of Asia and Africa. What is usually called limited monarchy exists when the powers of the monarch are restricted by fundamental constitutional rules, written or unwritten, which limit the royal prerogative. Sometimes these have been promulgated by the monarch himself in response to public pressure ; sometimes they have been imposed upon him by successful revolution. If these restrictions are extensive enough to destroy the supremacy of the head of the state, the government ceases to be a monarchy. Most of the so-called monarchies of today belong to this type.

Strength and Weakness of Monarchy. Monarchy is probably the oldest form of government, and is the form of organization that most states have taken during the greater part of human history. It has usually been accompanied by the belief that the monarch is divine in nature or that he rules as an agent of the gods or that he rules by divine right. It has been upheld by many writers, especially in the medieval and early modern period, as the natural and best form of government. Even recent writers[1] have praised it as superior to

[1] Treitschke, *Politics*, Vol. II, Chap. XV.

other forms. Monarchy has been upheld on the ground that it possesses simplicity of organization and is adapted to prompt and energetic action and to consistent and continuous policy. It secures strength and unity in administration, since officials are responsible to a single head and can be held to strict accountability. It avoids the contest of party factions for the control of government, and for that reason it is argued that monarchy is best adapted to secure equal justice for all classes in the state. Since the king stands above all parties and classes, he is able to rule impartially for the best interests of the state as a whole. Monarchy was well suited to the needs of early states, when it was necessary to impress discipline and habits of obedience on uncivilized peoples and when political consciousness and the ability to take part in government were not yet developed. Even in modern times the process of consolidating national states and of making needed reforms found the strong government of a monarchy decidedly valuable. If a good and wise despot could be assured, many arguments could be used to justify this form of government on the ground of efficiency, especially in times of crisis.

On the other hand, experience has shown that monarchy is subject to certain dangers. If the office of ruler is hereditary, there is no guaranty that a capable person will succeed to office. History is filled with examples of incompetent and unscrupulous hereditary rulers. Even if the office is filled by some method of selection which aims to avoid the chance of an incompetent ruler, experience shows that when power is concentrated in the hands of a single person it is likely to be administered in the interest of the monarch and the group that surrounds him, rather than for the equitable advantage of all. If the king is the source of law, there is no guaranty that he will obey even his own law, if it is to his advantage to break it. Even if the government of a monarchy were wise and efficient, it is defective as a form of organization for a civilized and intelligent people. One aim of government should be the development of political interest and loyalty and of social unity. No government in which the people are excluded from taking active part is likely to stimulate public confidence and support or to create an active and intelligent citizenship.

Many writers have pointed out the advantages of a hereditary monarch as the nominal head of a state where the actual government is carried on in his name by a group of ministers who are responsible to a majority in the legislative body. The influence of such a ruler, if he has the confidence of his people, may be exercised through the advice and warning which he gives to the ministers, especially as his position places him above the strife and tumult of party politics. Such an office is valuable also in continuing the historical tradition of the state and in serving as a bond of unity and a focus of national patriotism, especially in the case of a scattered empire. Against these advantages may be set the cost of maintaining a royal court, the danger that the monarch will degenerate into a useless idler, and the discrepancy between the theory of hereditary monarchy and the democratic ideas of the present day.

Aristocracy. Aristocratic government places political power in a comparatively small part of the population of the state. This class may be based on birth, wealth, age, military power, priestly power, education, or a combination of these and similar distinctions. However the ruling class may be selected, in an aristocracy the mass of the people are excluded from any effective share in government. Many writers, from Plato and Aristotle down, believed that aristocracy was the best form of government, provided that the ruling class was composed of those most competent to govern and that they exercised their power for the good of all and not for their own selfish interests. Some who have opposed class distinctions based on birth and wealth have believed in a natural aristocracy[1] of ability and character which should exercise a dominant influence in politics, and have believed that government should be so organized as to give opportunity for this natural aristocracy to rise to political power. In a sense all government is more or less aristocratic in that a considerable proportion of the population takes no part in government, that the greater share of governing power is concentrated in the hands of a comparatively small

[1] See Thomas Jefferson, *Works*, Vol. IX, p. 425.

number, and that public opinion is influenced and determined by the leadership of a few. The masses have neither the knowledge nor the time nor the unflagging interest necessary to enable them to rule. The line between aristocracy and democracy is difficult to draw, but the theory of aristocracy has no confidence in the political ability of the masses and believes in government by the select few.

Strength and Weakness of Aristocracy. The defenders of aristocracy argue that it is the most competent and efficient kind of government, and that it is based on the sound principle of equality rather than on the unsound principle of quantity in determining the location of political power. They deny that men are equal in political capacity, and emphasize the value of training and experience in political life and of attracting to public service men of especial ability. They assert that aristocracy is the safest and most moderate form of government, since it stands between the dangers of tyranny in the hands of a monarch and of the unrestrained power of ignorant and passionate mob rule. It is more likely than a democracy to respect authority and tradition and to avoid rash experiments or sudden changes. A governing class is likely to develop a sense of public service and responsibility and to transmit this tradition, as well as training and experience, to its successors who are brought up under the system. An aristocratic system encourages special ability, is not afraid of men of individuality and genius, and is able to maintain a consistent and vigorous policy in both domestic and foreign affairs.

The weakness af aristocracy lies mainly in the difficulty of fixing a sound and just principle for the selection of the group or class that is to exercise political power and of securing adequate guaranties that the group in power will not use their authority for the furtherance of their own interests rather than for the general good. All aristocracies tend to be narrow and exclusive, to develop arrogance and class pride, and to be conservative to the extent of retarding progress. The chief value of the aristocratic theory in the modern world is to emphasize the necessity for trained experts and efficiency in

government to counterbalance the democratic doctrine of the equality of men, which often results in the selection of unfit persons for responsible positions.

Democracy. Democracy is that form of government in which the mass of the population possesses the right to share in the exercise of sovereign power. It assumes political equality and opposes the idea that any class shall possess special political privileges or monopolize political power. It emphasizes the ideas of rule by the majority and of law as conforming to general public opinion. It has confidence in the capacity of the people to govern themselves, and bases authority on the consent of the governed. In a direct democracy laws are made and issues decided by immediate reference to the voting population ; in an indirect democracy the voters choose representatives for this purpose. The term "republic" is sometimes used to indicate a representative democracy, with an elected head.

In no democracy does every individual in the state take active part in government. Attainment of a certain age is considered necessary to give sufficient intelligence, experience, and judgment. Some may be excluded because of mental or moral unfitness or because of illiteracy. Until recently women were generally deprived of political rights. Even among those who take part in government, political power is divided unequally. Offices, especially those of importance, can be held by a few only, and special fitness may properly be demanded for certain types of officials. The actual power of a cabinet minister or of a member of the legislature is much greater than that of the average voter. Even in the formation of public opinion the influence of some is much greater than that of others. If, however, the form of government is supported by general consent ; if laws are made by representatives chosen by a wide suffrage or by popular referendum ; if the governing head of the state is elected, directly or indirectly, by popular vote or is responsible to the legislature ; if the right to vote is conferred equally upon a large proportion of the population ; and if opportunity to serve in governmental capacity is open to all classes of the population, the government may fairly be considered democra-

tic. Governments of this type, which includes most modern states, vary in the degree of democracy, from the point of view both of the numbers that share in political authority and of the actual extent of control exercised by those that possess some share.[1]

Strength and Weakness of Democracy. The value of any form of government may be judged either by the success and efficiency with which it accomplishes its proper purposes or by the effect which it produces on its citizens and the degree of satisfaction and confidence that they feel toward it. Some supporters of democracy have praised it on both the grounds mentioned above ; others, while somewhat dubious of its efficiency, have upheld it because they believe that its valuable effects upon the population concerned outweigh all its disadvantages. Those who believe that democracy is the best and most successful form of government argue that it alone provides for the responsibility of those who govern to those who are governed and results in a policy aimed at the welfare of all classes of the population. They hold that officials selected by popular election and subject to popular control are more likely to be competent and trustworthy than those that rule under a monarchic or aristocratic system, and that the rights and interests of all are best safeguarded if all have a voice in protecting their rights and furthering their interests. From this point of view they argue that democratic government is likely to insure a greater degree of efficiency and to promote a higher degree of general welfare than any other form. Since it is based on the general principle of equality, it is likely to promote justice, one of the main purposes for which the state exists. It transfers the basis of sovereignty from force to consent, and views the state as existing for the individual, rather than the individual as existing for the state. Personal liberty is therefore more likely to be legally safeguarded.

The strongest arguments in favor of democracy rest upon its value in developing and elevating the masses of the people, in stimulating their interest in public affairs and strengthening their loyalty and trust in a government in which they take ac-

[1] A. F. Hattersley, *A Short History of Democracy.*

tive part. Democracy thus serves as a training school for citizenship ; it strengthens love of country ; it minimizes the dangers of discontent and revolution. Popular intelligence and virtue are its most valuable results. Many of those who uphold democracy acknowledge that certain conditions are essential to its success A high average degree of intelligence, a constant interest in public affairs, and a sense of public responsibility are necessary to the satisfactory working of democratic government. The people must be willing to accept the principle of majority rule, but they must also respect the rights of strong minorities. Ignorance and indifference on the part of the mass of the population make impossible the successful working of democracy ; hence democratic states stress the value of public education and of continued public interest.

The adoption of the forms of democratic government by a state whose population is not competent to operate them is not a fair test of democracy, nor is the result a satisfactory government for the state concerned. Democratic institutions should be introduced gradually, as the people are prepared by education in political affairs and by training in the habits and discipline of self-government. Many writers have pointed out the necessity of restricting democratic government by a written constitution, and by a system of checks and balances for the purposes of safeguarding property and contracts, restricting the power of majorities, making difficult sudden changes in the organic structure of the state, and preventing hasty action as the result of temporary discontent or thoughtless emotion. The ideals of democracy have been widely and enthusiastically accepted in the modern world. They have unquestionably aided in improving in many ways the position of the masses, and, whatever their defects, they will be difficult to replace, since people who have once tasted power are not willing to give it up without a struggle.

Critics of democracy have been numerous, not only in the earlier period, when they strove to uphold the monarchies and aristocracies which democracy, as a revolutionary movement, was attempting to destroy, but also in recent years, as a result of actual experience with the results of democratic government.

Early writers usually viewed democracy as a dangerous form of government, and thought of it in terms of the rule of a turbulent and anarchic mob. Later critics devoted attention to the incompetence of the masses. They denied that men are equal and attacked the doctrine that one man's vote is as good as another's in the choice of officials or in the determination of public policy. They pointed out the great inequalities in intelligence and capacity, argued that quality rather than quantity should be given consideration, and emphasized the value of special training and expert knowledge in political affairs. Democracy, they believe, means government by the ignorant and unfit. It tends to be suspicious of men of unusual ability, and standardizes life on a low level. Demagogues, agitators, and bosses, they argue, become the natural leaders in a democracy, rather than men of ability and genius. Popular election, short terms, and rotation in office prevent experience and deter men of outstanding quality from taking active part in public life.[1]

While the interest of democracy in popular education is admitted, its critics point out that education in a democracy tends toward low standards, toward the technical and practical aspects, and neglects culture, literature, and art. The rudeness and bad manners of democracies have been noted, resulting probably from the association of manners with the older aristocracies and from the feeling that in a democracy one man is as good as another and must exhibit his equality by vigorous self-assertion. The extravagance and wastefulness of democracies have also been pointed out. The masses who control the vote do not pay the greater part of the taxes, and are willing to spend freely what they think is paid by the wealthy few. On the other hand, democracies are averse to large salaries for public service, and this aversion results in the placing of mediocre men in important positions.

Critics of democracy argue that it is not conducive to individual liberty, and that there is greater danger from the tyranny of the majority or of those in control of a democratic system than in any other form of government. The tremen-

[1] H. W. Jones, *Safe and Unsafe Democracy.*

dous power behind a democratic government makes it all the more dangerous if it is intolerant. Individuality and freedom of thought are thereby ruthlessly crushed. Many writers have pointed out the difficulty of carrying out a consistent policy over a period of years under a democratic system. The frequent changes in administration and in policy resulting from the overthrow of the party in power make it difficult to secure continuity of political purpose or to plan for the future. This weakness is considered especially dangerous in foreign affairs.

The ease with which the opinions of the masses can be influenced by propaganda has received much attention in recent years.[1] The growing complexity of life and the expanding powers of government make it difficult for the average citizen to secure accurate information or to form sound judgments on public questions. His opinions will be formed largely by what he reads in the press and by what he hears in picture theaters and on the radio. Whatever ideas are given currency by the groups that control these sources of information exercise large control in modern democracies. Fickleness and emotionalism are defects frequently mentioned by the critics of democracy. The cost, both in time and in money, of working the processes of democratic government may also be mentioned. The elaborate mechanics of nomination and election for numerous offices and the lavish expenditure of money in connection with elections not only are wasteful but also tend to destroy the spirit of democratic government and, instead, to give control either to a plutocracy or to a boss and machine that control the votes. Corruption in a democratic government is considered by some to be more extensive than in a monarchic or aristocratic system, and to be worse in its effects because it reaches down to all classes of the people.

Many critics of democracy believe that its weaknesses have been intensified by the tendency of democracy to attempt too much. The beginnings of democracy in the modern world were accompanied by the theory of individualism. Men who were struggling against the autocratic power of monarchs feared government and wished to limit its powers. They

[1] E. L. Bernays. *Crystallizing Public Opinion.*

believed that the best government is that which governs least, They were concerned mainly with individual rights and freedom. When, however, the democratic revolutions were successful and the people secured control of the government, they lost their fear of authority. They felt that it was safe to intrust power to an authority which they controlled, and they began to appeal to the state for regulations of all kinds and for positive action to promote general welfare. As a result, the past century has seen a rapid expansion of governmental action. Overlegislation has become a danger, and a strain has been put upon the working of democracy which many believe it cannot bear. It was much easier to work democracy successfully under the conditions of the simple rural life of a century ago, when the government did not attempt to do much, than it is under the complex conditions of urban, industrial civilization today, when the government, partly of necessity and partly through overconfidence in what it can accomplish, attempts to do too much.

After the First World War efforts were made to extend the functions of democracy to control over foreign affairs. This was due to the dislike and fear of secret treaties and to the belief that democracies are less likely to make war than autocratic governments. Whether democracies are naturally peace-loving is a disputed question. As to the competence of a democracy to direct foreign policy, it is argued that the people are more likely to be competent to choose their own officials and to decide questions ofdomestic concern than they are to judge the issues of international relations. Lack of knowledge and lack of interest on the part of the masses might make popular control of foreign relations of doubtful wisdom. The injection of foreign policy as an issue into the politics of a state not only weakens the state in its external relations but also makes more difficult the settlement of domestic problems on their merits.

Democracy and Efficiency. The main problem in modern democratic government is to secure a proper balance between the recognized value of democracy and the equally desirable principle of efficiency. Between these two ideals there is a certain discrepancy. Democracy carried to the extreme of an

equal share in government for all would result in inefficient government. If efficiency alone were aimed at, a wise and benevolent dictator would probably result ; at least the important powers of government would be delegated to a small number of able and expert persons. In recent years the ideas of democracy and efficiency have both been popular, and two apparently contradictory tendencies have been evident, one toward more democracy, the other toward greater efficiency in government. Examples of the growth of democratic ideas and methods are found in the establishment of constitutional republics in many European states, in the abolition of plural voting and the reduced power of the House of Lords in England, and, in the United States, in such devices as the widening of the suffrage, the use of popular initiative and referendum in lawmaking, the recall of elected officials, and the direct primary in nominations. All these tend to increase the number of persons who take part in government and to extend the actual control of the voters over the government. More democracy is desired.

On the other hand, efforts are being made to increase the efficiency of government, and the result of this tendency is to restrict democratic control. Examples are found in the establishment of dictatorships in various European countries and in the movements which aim at control by a strong and vigorous administration of experts. In the United States such devices as the city-manager, the civil-service method of selecting officials by competitive examination, the use of boards or commissions of experts for many purposes of governmental regulation, the short ballot, by which many officials formerly elected are chosen by appointment or by civil-service tests—all emphasize efficient rather than democratic government. The contradiction between these two apparently opposite movements may be reconciled somewhat if they aim to place the ultimate decision of questions of policy in the hands of the people, but leave the actual administration of this policy in the hands of specially trained experts. Along this line, perhaps, the compromise of democracy and efficiency may be best worked out. An intelligent public opinion on important questions of general policy, and a willingness to select and to

trust competent officials and to recognize that the administration of government is a profession, demanding experience and trained knowledge, may retain the values of democracy and avoid some of its worst dangers. It is important, however, that public opinion should be really *public*—that is, it should represent the ideas of a large majority and should be peaceably acquiesced in by the minority—and that it should be really *opinion*—that is, it should represent sound judgments based on accurate information. A wise democracy will not place too great burdens of decision and responsibility in details upon its voters, nor expect them to be able to decide wisely upon the complicated and technical problems of modern political life. Greater confidence in wisely selected representatives, increased use of experts in administration, and avoidance of overlegislation would remove the grounds for much recent criticism of democracy.

Dictatorship. The growth of executive power and the establishment of dictatorship in many countries in the period following the First World War was a startling surprise to most political thinkers. While dictatorship had survived during the nineteenth century in some states, especially in the Latin American states and in Russia, it was believed that the backwardness of these countries in political development and the internal conditions peculiar to these areas were responsible. It was generally expected that the future would see a steady growth and extension of democratic ideas and organization, and the years immediately following the war were marked by this process. However, after the war to "make the world safe for democracy," the democratic theory was bitterly attacked and strong dictatorships were set up in many of the smaller states of central Europe as well as in Italy, Germany, and the Soviet Union.

The democratic doctrines of the equality of man, the supremacy of the legislature, the existence of rival parties, the freedom of discussion and criticism, and the rule of the majority were rejected, and were replaced by a one-party system, composed of a disciplined minority, a powerful individual as the head of the government and a strict control over political ideas and expression through indoctrination, propaganda,

and police. The state was glorified over the individual, and obedience and duty were stressed rather than rights and freedom. Bitter attacks were made on the incompetence of legislative bodies and on the lack of unity caused by the rivalry of competing parties. Even in the democratic states the tendency toward the increased power of the executive and administrative branches of the government was noted. While the Second World War has overthrown the powerful dictatorships set up in Italy and Germany, and has displaced the semifeudal, divine-right system of Japan, the future of democracy is not yet assured. The world today is seriously divided between those who believe in individual freedom and popular control and those who believe in an all-powerful state, a one-party government, and a dominant leader.

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CHAPTER XIII

SEPARATION OF POWERS

OUTLINE

Necessity for Separation of Powers
Theory of Separation of Powers
Criticism of the Theory of Separation of Powers
Cabinet and Presidential Government
Advantages and Disadvantages of Cabinet Government
Advantages and Disadvantages of Presidential Government

Necessity for Separation of Powers. Because of the extent of modern states in area and population and because of the wide range of interests with which their governments deal, a large number of persons are occupied in government, and considerable distribution of power among various organs is necessary. One of the main principles on which such distribution is made is that of the nature of the function to be performed. The will of the state must be formulated and expressed in commands or laws. These commands must be put into operation by administrative agents. In case of dispute, laws must be interpreted and applied in individual cases. For these purposes the powers of government are distributed among organs that are usually classified as legislative, executive, and judicial. Legislative bodies are concerned in the making of law ; executive officials, in the enforcement of law ; and judicial officials, in the interpretation of the meaning of law and in the application of it to individuals in cases of dispute or of failure to observe it. The theory that these functions should be performed by different bodies of persons, that each department should be limited to its own sphere of action without encroaching upon the others and that it should be independent within that sphere, is called the theory of Separation of Powers. The theory that each of these departments should share in the powers of the others or exercise a

certain control over their actions is known as the theory of Checks and Balances. At the time when government was feared as being irresponsible and despotic, it was believed that by these devices any single organ of government would be prevented from becoming too strong, and that thereby liberty would be safeguarded.

Theory of Separation of Powers. The idea of a threefold distribution of governmental powers was recognized by early political writers. Aristotle[1] classified the departments of overnment as the public assembly, the magistrates, and the judiciary. Polybius and Cicero, writing of the Roman Republic, attributed its excellence to the system of checks and balances in its organization. In the Roman Empire and in medieval feudalism the idea of separation of powers largely disappeared, but it was revived in the fourteenth century by Marsiglio of Padua,[2] who drew a clear line between the legislative and executive functions of government. In the sixteenth century Jean Bodin[3] pointed out the danger of allowing the monarch to administer justice, and argued that judicial functions should be intrusted to independent magistrates. At the time of the Puritan revolution in England, in the seventeenth century, the doctrine of separation of powers was given much attention, especially the distinction between legislative and executive authority. James Harrington, in his *Oceana*, urged a clear separation between legislative and executive departments, and believed in the value of elaborate devices to secure a system of checks and balances. John Locke[4] divided the powers of government into the legislative, the executive, and the federative, meaning by the latter the diplomatic agencies of the state.

The first writer to treat the idea of separation of powers as a fundamental principle in politics was Montesquieu.[5] Basing his reasoning on what he considered the form of English government, Montesquieu held that there are three sorts of power in

[1] *Politics*, Bk. IV, Chap XIV.
[2] In the *Defensor Pacts* (1324).
[3] *De la re'publique*, Bk. I Cnap. X (1576).
[4] *Two Treaties of Government*, Chap. XII (1690).
[5] *Esprit des lois*, Bk. XI, Chap. VI (1748),

every government : legislative, executive, and judicial. If these powers or any two of them are united in the same hands, individual liberty is threatened. Hence he urged the importance of intrusting each department of government to a distinct and independent organ. While the separation of departments which Montesquieu extolled did not actually exist in England, and became even less distinct as time went on, the general principles of his theory were adopted in the political thought of the day. They became a part of the political philosophy of the American and French revolutions and were incorporated in the constitutions that were drawn up toward the close of the eighteenth century. Essentially similar ideas were laid down in England by Blackstone,[1] who argued that liberty was destroyed if the power of making and enforcing law was vested in the same body of men. In 1789 the Constituent Assembly in France declared[2] that a country in which the separation of powers is not provided for does not have a constitution.

In the United States, where in colonial times a long contest between governor and assembly had emphasized the hostility of executive and legislature, the doctrine of separation of departments and of numerous checks and balances was especially welcome. At the time of the framing of the early state constitutions and of the national constitution, the influence of Montesquieu and Blackstone was powerful, and their ideas were accepted as political axioms by the early American statesmen. In the *Federalist*,[3] Madison argued that the accumulation of legislative, executive, and judicial powers in the same hands was the very definition of tyranny. The constitution of Massachusetts (1780) declared that "in the government of this commonwealth the legislative department shall never exercise the executive and judicial powers or either of them ; the executive shall never exercise the legislative and judicial powers or either of them ; the judicial shall never exercise the legislative and executive powers or either of them, to the end that it may

[1] *Commentaries on the Laws of England* (1765).
[2] *De claration des droits de l'homme et du citoyen*, Art. 16.
[3] No. 47.

be a government of laws and not of men." Later the doctrine was stated by the Supreme Court as follows[1]: "It is believed to be one of the chief merits of the American system of written constitutional law that all powers intrusted to the government, whether state or national, are divided into three grand departments—the executive, the legislative, and the judicial; that the function appropriate to each of these branches of government shall be vested in a separate body of public servants and that the perfection of the system requires that the lines which separate and divide these departments shall be broadly and clearly defined". The theory was embodied in similar form in the constitutions of states, such as Mexico, Argentina, Brazil, Australia, and Chile, that were modeled on the American type. Less attention was given to the theory by the states of continental Europe. In France, however, the doctrine was used to uphold the freedom of the administrative authorities from control by the judiciary; and the idea was developed that the government and its agents should be independent of the jurisdiction of the ordinary courts and should have its own system of administrative law and courts.

Criticism of the Theory of Separation of Powers. The theory of the threefold departments of government and of the desirability of their clear separation has been attacked on two main grounds. Some writers argue that the functions of government do not fall into three classes, but these critics differ as to the proper classification, some arguing for a twofold separation; others, for a fivefold separation. The second line of attack denies the possibility or desirability of separating the departments or of setting up elaborate checks and balances, and argues for a coördination of governmental functions into a harmonious and unified system. While all agree that differentiation of function is necessary in government, and that efficiency is secured by specialization, the eighteenth-century doctrine that liberty can be secured only through an extensive system of checks and balances has lost much of its former credit.

[1] Kilbourne v. Thompson, 103 U. S. 188.

The traditional threefold separation of powers has been attacked by a number of recent writers,[1] who argue that strict logic recognizes only two functions of government, namely, that of formulating and expressing the will of the state and that of executing or administering the will thus expressed. According to this classification the judiciary is considered as a part of the administrative organization, engaged in applying the law to individual cases. They admit, however, that the courts, because of the peculiar nature of the administrative duties they perform, should have an organization separate and to a considerable degree independent. These writers, making legislation and administration the functions of the state, usually subdivide the administrative activities into three classes : the executive, engaged in the supervision and direction ; the administrative, engaged in the carrying out of technical details ; and the judicial, engaged in applying the law to concrete cases

Another group of writers, basing their classification on the actual organization of modern states rather than on a theory of governmental functions, find a fivefold classification of governmental organs as follows : (1) the electorate, which, through elections and in some cases through initiative and referendum, has come to be a distinct branch of government ; (2) the legislative organs, which are engaged in the creation of law ; (3) the executive heads, who direct and supervise the carrying out of the law ; (4) the administrative bodies and officials, who perform the routine of government business ; (5) the judiciary, which interprets the law and applies its remedies and penalties in particular cases. To this classification might be added the constitution-making body in those states that provide a special organ, such as a constitutional convention, for this purpose.

While the general doctrine of the separation of powers contains valuable political principles, it is applicable in only a limited sense. No government can be organized on the basis of a

[1] F. J. Goodnow, *Politics and Administration* ; L. H. Jenks, "The Constitutional Trinity," in *American Mercury*, March 1926 ; T. R. Powell, "The Separation of Powers," in *Political Science Quarterly*, June, 1912 ; March, 1913.

complete separation of legislative, executive, and judicial functions. In all modern states these departments are more or less related and dependent, and each exercises powers which, under a strict application of the theory, belong to the others. The position of the judiciary is usually most distinct and independent. The tenure of judges is usually sufficiently permanent to remove them from the control of the body that selects them, their functions are carefully limited and protected, and particular effort is made to keep them free from political bias or external influence. But legislatures and executive officials exercise functions that are judicial in nature, and the courts share in creating and administering law. Legislatures not only create law that the courts apply, but in serving as courts of impeachment, as in France and the United States, or as courts of final appeal, as in England, they exercise powers that are properly judicial. The executive, in its power of pardon and in deciding many disputes arising in the course of administration, also shares in judicial authority. The lower courts are frequently important administrative as well as judicial tribunals, and courts exercise legislative functions in issuing certain writs, in extending or restricting the law by interpretation, and in applying principles of equity or custom. In the United States, where courts may declare laws unconstitutional, the judiciary exercises a considerable control over legislation.

Legislative and executive departments cannot be completely separated. The law that the executive carries out is to a large extent created by the legislature ; but in most states, the cabinet, as a committee of the legislature, directs the making of those laws, which, as heads of the various administrative departments, its members execute. Hence, the same body of men controls both legislation and administration. The legislature, by its share in the appointing power, and its control over taxation and appropriation, exercises authority mainly administrative in nature. The power of the executive to make treaties is limited in some states by the requirement of legislative approval. The executive, in its veto, its right to initiate legislation either directly or by recommendation, and its power of issuing ordinances independent of or supplementary to existing laws,

shares in legislative authority. Control over the military forces gives to the executive, especially in time of war, large authority over the entire government.

The doctrine of separation of powers, in so far as it concerns the control of the judiciary over executive officials, has had a different application in Europe from that obtaining in England and the United States. In these latter states, whose development has been marked by long contests against executive power, and whose strong individualism has rebelled against extensive governmental authority, officers of government acting in their official capacity are subject to the jurisdiction of the ordinary courts almost to the same degree as private citizens ; and their individual acts, except when of a political or contractual nature, may in many cases be scrutinized or prevented by the courts. On the Continent, especially in France, a much wider scope is given to administrative officials ; and their acts are reviewed by special tribunals known as administrative courts, organized quite differently from the ordinary courts and not forming part of the regular judicial system. While asserted to rest on the principle of separation of powers this executive independence may result in considerable limitation on civil liberty, since arbitrary acts may be performed by executive officials, with no way of bringing them to account before the ordinary courts of law.

In assuming that extensive separation of powers is essential to liberty, and that each department, limited to its own functions, should be independent of other organs within that sphere, the doctrine breaks down. In a democratic state, concentration of authority in the organ most directly representing the people may secure greater liberty than divided powers granted to independent and irresponsible organs. In fact, checks and balances usually result in a considerable degree of minority control. Beyond a certain degree, separation of powers leads to troublesome deadlocks that prevent government from accomplishing anything. The government of each state is a unit, engaged in expressing and executing the will of the state, and a certain degree of harmony among the various organs, no matter how extensively differentiated, is essential.

The legally expressed will must be put into effect. Obviously the formulation of law is both antecedent and superior to its execution ; and all states, if their government is to be efficient, must provide some means of securing unity of action among the various organs, and of subordinating organs engaged in executing law to those that create it.

This coördination and control may be found in the formal government or outside. In most states it is secured by coördinating legislation and administration through a cabinet which controls the administration and is also the steering committee in legislation. In the United States, where separation of powers and checks and balances have been pushed to an extreme dangerous to the unity of governmental action, political parties have arisen, powerful in organization, binding together all the departments of government. If they are able to control the election of both the bodies that express and those that administer the state's will, a certain degree of harmony may be secured, in spite of the checks and balances provided in the legal system. As a result, parties are securing increasing legal recognition as part of the formal governmental system. In Italy and in Russia control is exercised by a single political party which dominates the entire government.

In an extreme form, therefore, both the doctrines of separation of powers and of checks and balances are dangerous to good government. Extreme separation of powers prevents the unity and coördination necessary to administer the legally expressed will of the state ; extreme checks and balances create friction and deadlocks that prevent smooth and efficient government. As stated by James Madison[1] at the time of the framing of the American Constitution, the theory is valuable in the general sense that "the powers properly belonging to one department ought not to be directly and completely administered by either of the other departments" and that no department "ought to possess, directly or indirectly, an overruling influence over the others in the administration of their respective powers." In this form the theory is so general and elastic as to have little practical value.

[1] *The Federalist*, No. 47.

Government consists of a group of organs with differentiated functions but with a common task and purpose ; and their harmonious coöperation is essential to success. A strict line of separation cannot be drawn between the several departments. Each exercises the essential part of powers peculiar to itself, but it does not exercise all such powers. In addition, each exercises incidental powers which do not belong to it according to strict theory of logical separation, but which are necessary to enable it to perform efficiently its essential functions. Moreover, the will of the lawmaking power must be superior to that of executive and judicial organs. Many organs share in the creation of law, and these bodies express the sovereign will of the state. Law must be expressed before it can be interpreted and enforced ; and sufficient unity of government should exist to guarantee that the law, as expressed, will be administered and applied. Even here, however, details must be filled in and common sense used in the application of law, if the government is to be conducted on practical lines. Governments are not machines, but are bodies of men. The functions performed by the various parts adjust themselves to one another by a gradual and constantly changing process. The influence of individual leaders often reaches far beyond the confines of a single department and breaks down paper theories of strict separation or of legal balance.

Cabinet and Presidential Government. From the point of view that the functions of the state are twofold, to make law and to administer it, a fundamental classification of governments results from the relation that exists between the legislative and executive departments. These departments may be unified and coördinated under the control of the same persons, so that they must work in harmony ; or the principle of separation of powers may be applied and the two departments be largely independent, each possessing checks on the powers of the other, with the possible result of divergence in policy or deadlock. In the first case the cabinet[1] form of government exists ; in the second, the presidential[2] form of government exists.

[1] Sometimes called parliamentary or ministerial.
[2] Sometimes called nonparliamentary.

Cabinet government is that form in which the real executive, consisting of a prime minister and cabinet, is legally responsible to the legislature for its acts. Since the legislatures of most modern states consist of two houses, the cabinet, in practice, tends to come especially under the control of that house which has greater power over money affairs, usually the one which most directly represents the electors. The tenure of the cabinet depends upon the legislature. If its policies do not receive the support of the legislature, the cabinet must resign or must dissolve the legislature and stake its existence on the outcome of a new election. At the same time, the members of the cabinet are usually members of the legislature, the leaders of its majority party or of a coalition that composes a majority. They take part in its deliberations ; in fact, they serve as its steering committee, guiding and directing legislative action as long as they receive the support of the legislative majority. From their seats in the legislature they answers questions and defend their policies from attack. As individuals, the members of the cabinet serve as heads of the various departments of administration.[1] As a body they direct the policy of the state in legislation and in foreign affairs Legislative and executive functions are thus combined in the cabinet form of government, the relation between them being one of intimacy and interdependence.

The cabinet system originated in England and has attained there its greatest development and its most satisfactory results. It was adopted, with some modifications, by most of the states of Europe, and it appeared in most of the new constitutions that were created after the First World War. In states having the cabinet form of government a nominal head of the state usually exists, either a hereditary monarch, such as the English king, or an elected head, such as the French president. In addition to acting as the ceremonial head of the state, this official may possess certain governmental powers or may exert considerable personal influence ; but he possesses no veto over

[1] Ministers who do not act as department heads are sometimes made members of the cabinet in order to secure the support and experience of eminent persons who are not willing to serve as administrative chiefs.

legislation and can perform no important governmental act except through the cabinet ministers.

Presidential government is that form in which the chief executive is independent of the legislature as to his tenure and, to a large extent, as to his policies and acts. In this system the nominal head of the state is also the real executive. Even in this system the separation of legislative and executive powers is not complete. Impeachment and removal of the executive by the legislature for certain offenses, and the legislative power to override an executive veto, are usually found in presidential governments, but the general principle that the tenure and prerogatives of the executive are established by the constitution and are free from legislative control characterizes this type. Under this system the ministers who act as heads of the departments of administration are appointed by the president, and may be removed by him. They are usually chosen by the president from his own party and are responsible to him alone. They are not members of the legislature and do not ordinarily have the right to appear or speak before it. The chief executive and his ministers are not necessarily of the same party as the majority of the legislature, and their policies may run at cross purposes to those of the majority in the law-making body. The executive may make recommendations to the legislature, and the heads of departments may have their measures brought before the legislature by friendly members; but the legislative program is not officially prepared and introduced before the legislature by the ministers, as in the cabinet system, nor do the chief executive and his ministers resign if their policies are defeated. Under this system the ministers are administrative chiefs, rather than parliamentary leaders, the executive department is largely independent of the legislature, and the principle of separation of powers is applied. In contrast to the cabinet form of government, in which the legislature is supreme and the other organs are its agents, the presidential form makes the legislature and the executive coördinate in rank, neither having the power to control the other. The presidential form of government is most fully developed in the United States, and is found also in Switzerland and in most of the Latin-American republics.

Advantages and Disadvantages of Cabinet Government. Cabinet government is well adapted to a state which desires to retain a hereditary monarch after the state has become democratic, as in the case of England, although the nominal head may be an elected official, as is the French president. The cabinet system also has the advantage of securing harmonious coöperation between the legislative and executive departments of government. And the presence of the heads of administration in the legislature and their preparation of important measures keep that body informed on the questions with which it must deal, and make its policy more likely to be consistent than is possible where legislation is introduced by irresponsible individuals or shaped by numerous independent committees. This adjustment is well adapted to secure prompt and efficient governmental action. Under the cabinet system the men in charge of the departments of administration are usually trained leaders and have had legislative experience, having been tried and tested for a long period in public affairs.

The cabinet system is valuable also in placing the administration under direct and constant responsibility to the popularly elected chamber and therefore indirectly to the electorate itself. If at any time the policies of the administration fail to secure the approval of the people's representatives, the cabinet may be removed from office and the leaders of the opposition put in their place. If, however, the cabinet believes that its policies are approved by the voters, it may appeal to them in a new election. The electorate is thereby given opportunity to secure prompt results, and does not need to wait until the expiration of a fixed term of years. The government is always responsible, and a prolonged difference of opinion between the government and the people is not possible. In time of crisis the cabinet system also makes possible the selection of executive heads especially suited to the needs of the times, while under the presidential system the government is selected in advance for a fixed period and can be changed to meet new issues and new conditions only after a considerable lapse of time.

The cabinet form of government has been criticized because it destroys the independence of the executives and, to some

extent, of one of the houses. Ministers may be distracted from their executive duties by their legislative tasks, and the legislators may be distracted from questions of national policy by their interest in administration. It should be noted, however, that in the cabinet system, where the principle of separation of powers is ignored in the concentration of administrative powers and legislative leadership in the same persons, nevertheless the principle may be applied in practice to a large extent if the legislature refrains from interfering in administrative affairs, such as the making of the budget, the appointment of executive officials, and the details of administrative policy. On the other hand, in the presidential form of government, where the principle of separation of powers is applied in the establishment of an independent executive, to whom alone the ministers are responsible, the system of checks and balances may destroy the principle in practice. The legislature may share in administrative functions by its power to ratify appointments and treaties and by making appropriations not recommended by the administration. The executive may share in legislation by his power of veto and by the pressure which the administration can exert upon the legislature to influence legislation. If, in addition, the courts may declare laws unconstitutional, the principle of separation of powers is further weakened. In actual practice as great a degree of separation of powers may be secured in a cabinet government, such as that of Great Britain, as in the presidential system of the United States, where neither the theory of the union of powers nor that of a separation of powers has been consistently carried out.

A certain element of weakness in the cabinet form of government results from the lack of a single executive head. Under the presidential system the president appoints and may remove the heads of departments. Executive authority is concentrated in the hands of one man. In the cabinet system the prime minister, while enjoying a certain preëminence, is rather the leader of a group of equals. He must give consideration to the opinions of his associates and make compromises with them in order to retain their support and that of their followers in the

legislature. Otherwise the cabinet falls, through the loss of its majority in that body. This is particularly the case in states with many parties and with a coalition cabinet. This lack of a single, responsible head may be a source of weakness, especially in time of war or of national crisis.

It has also been urged against the cabinet system that, where there are only two important parties, it places the entire contol of the government in the hands of the majority party. Partisan spirit is thereby intensified, and the opposition attacks the policies of the administration regardless of their merits, because that is the only way by which it can come into power. The cabinet, likewise, is compelled to consider the effects of its policies upon public sentiment, rather than the needs of the nation, lest it lose the support of its majority. In continental Europe, where there are usually many parties and where a single party is seldom strong enough to control a majority of the legislature, the cabinet is controlled by a coalition of parties, disunited and unstable to an extent which leads to paralysis in government, to frequent overturns of the cabinet, and to a scramble for power at the expense of consistent policy. Since each group has a chance of coming back into power in the next coalition, there is less incentive for unified action in the cabinet or for support of its policies. In Great Britain, where the cabinet is strong, it has been criticized for usurping the functions of Parliament and becoming the real lawmaking body ; on the Continent, where the cabinets are weak, they are criticized for failure to take responsibility and for becoming mere clerks of parliament.

Advantages and Disadvantages of Presidential Government. The presidential system places large powers and concentrated responsibility in the hands of the executive, and has certain value in time of war or national crisis. It guarantees stability of administration for a period of years, and is energetic and powerful, because relatively free from the hesitation and disagreement that often accompanies a plural executive. Administrative policy may be pursued vigorously without the constant fear of alienating friends in the legislature and there-

by shifting the political balance, which can be done only at election times fixed by law. For administrative purposes there is a certain advantage, since the ministers are not obliged to give constant attendance in the legislature and can devote themselves wholly to the duties of their departments. The presidential system also makes possible the selection of experts to head each department, whereas, in the cabinet system, the party leaders who direct it may not be particularly suited to head the departments to which they are apportioned. In general, the legislature in the presidential system is less likely to be dominated by party spirit, and individual members can vote independently on the issues presented to them, as the fate of the administration does not depend upon their support.

On the other hand, there are serious defects in the presidential system. The importance of the executive office makes times of election periods of disturbance and, in turbulent countries, even of revolution. When legislatures and executive are of different parties, there is constant danger of deadlock. When the executive and the legislature are at odds, each can shift the responsibility to the other, and nothing can be accomplished until a new election, which may be some time distant, brings relief. Each department is jealous of the other, and frequent conflicts as to the scope of their respective powers are likely to arise. In contrast to the cabinet system, where a single committee, the cabinet itself, guides legislation, the legislature under the presidential system is organized into a number of independent committees. In this way power is divided and hidden away, and responsibility is hard to find. The jurisdictions of these committees overlap, they deliberate under conditions little influenced by public opinion, and they are not responsible for the measures they recommend. Extravagance in appropriations and logrolling methods for the passing of measures of private or sectional interest are more likely. The lack of direct initiative in respect to legislation on the part of the president and his ministers, and the lack of direct responsibility of the president to the representatives of the electorate, are considered serious defects by many.

While the presidential system was adopted in the United States because of the fear of executive domination over the legislature in case the president were given a direct share in legislative power, the result of his independent position has been, in the opinion of some, the creation of the very executive autocracy which it was hoped to avoid. In the early history of the United States, cabinet members frequently appeared in Congress for the purpose of consultation and of giving information, and they exerted an important influence on legislation. Later the members of the cabinet were excluded from appearing in Congress. More recently, proposals have been made to permit cabinet members to sit in Congress or to appear before it to answer questions or to explain legislation desired by the administration. The supporters of this proposal argue[1] that it would remedy some of the defects of too great separation of powers, would secure greater harmony and coöperation between executive and legislature, and would prevent much misunderstanding and ignorance.

Both cabinet and presidential forms of government have advantages which deserve continuance, and each can be improved by taking advantage of practices which have proved successful in the other. Recent tendencies are toward the adoption of the essential features of the cabinet system at the same time that a place is made for an executive with certain independent powers. As a possible compromise the following may be suggested : the creation of a semi-independent executive, with full authority over purely administrative matters ; the requirement that ministers must assume responsibility before the legislature for the political acts of the executive ; the right of ministers to have free access to the legislature to take part in discussion ; the right of ministers to prepare the budget and to formulate and present to the legislature important laws considered necessary by the administration.

[1] See W. Wilson, *Congressional Government*, Chap. V ; A. L. Lowell, *Essays on Government*, Chap. I ; F. E. Leupp, "The Cabinet in Congress," in *Atlantic Monthly* December, 1917 ; W. Redfield, "Cabinet Members on the Floor of Congress," in *World's Work*, May, 1920.

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CHAPTER XIV

DIVISION OF POWERS

OUTLINE

Division of Powers on Territorial Basis
Unitary and Federal Government
Sovereignty in the Federal System
Distribution of Powers in the Federal System
Advantages and Disadvantages of Unitary Government
Advantages and Disadvantages of Federal Government
Conclusion

Division of Powers on Territorial Basis. In addition to the distribution of governmental powers in accordance with the character of the function to be performed, as discussed in the preceding chapter, modern states, because of the extent of their area, find it desirable also to divide the powers of government along territorial lines. According to this method the territory of the state is divided into a number of distinct districts, each of which is charged with the performance of certain governmental duties within its boundaries and is provided with a governmental organization for that purpose. A national government and a series of local governments are the result of this process. In addition, therefore, to the principle of separation of powers, which distributes governmental powers functionally, the principle of division of powers is applied, which divides governmental powers territorially. Both these methods are employed in the organization of all modern governments, the functional distribution reappearing within each territorial division.

The desirability of the division of powers among territorial units results, not only from the great extent of territory over which many modern states exercise jurisdiction, but also from the fact that many functions of government have to do with problems that affect the interests of particular localities rather

than the country as a whole. If a single central government were to undertake all functions, the burden of work thrown upon it would be too great for efficient administration, and would result in intolerable expense and delay. Besides, it is more satisfactory and just that smaller communities should manage those affairs that concern themselves alone, because of the presumption that such affairs will be better administered by those directly concerned and because it gives to a larger number of persons an interest and a share in political action.

The system of territorial subdivision is essentially similar in all modern states. For certain purposes the entire area of the country is treated as a governmental unit, with a governmental organization known as the central or national government. This area is subdivided into a relatively small number of important divisions, known by various names,—commonwealths, provinces, departments, cantons,—each with a completely organized government. These grand divisions are further subdivided into smaller areas, known as countries, townships, communes, and the like, each also having its political organization. In addition, all modern states recognize that urban and rural areas present different problems of government ; hence they grant to the urban areas a special political organization and confer upon them governmental powers over their peculiar interests. The growth of cities has been one of the most important developments of the past century, and has created new and difficult problems of government.[1] The legal position of the city in the state and the degree to which it shall possess municipal home rule, or the right to determine its own form of government, have been much disputed questions. The peculiar nature of city problems, which are largely administrative and deal with business questions, has given an impetus to the demand for efficiency in government and the use of trained experts.

In addition to this general system of subdivision, numerous special areas are created for the purpose of administering a particular function. Such administrative districts have been created for the collection of national revenue, the conduct of

[1] W. B. Munro, *Municipal Government and Administration*, 2 vols.

the postal system, the control of education, the care of the public health, the maintenance of roads, the relief of the poor, and numerous other purposes. The more important modern states also possess colonial dependencies, and set up in each of these a governmental system more or less under the control of the national government of the home state. Sometimes colonies are desired as outlets for the surplus population of the home state ; sometimes they are used as areas for economic exploitation, in which raw materials may be secured, or markets for home goods found, or opportunities for profitable investment developed ; sometimes they are acquired for their strategic location for military, naval, or commercial purposes.[1] The relation of the colony to the mother country, the form of colonial government that is established, and the effect of colonial expansion on the international relations of states all raise important political questions.

In determining how the sum total of governmental powers shall be distributed territorially, certain problems arise. Among these the most important are the following : (1) What authority shall decide how the territorial distribution shall be made ? (2) What shall be the system of geographical division into political units ? (3) What governmental powers shall be delegated to each territorial unit ? (4) What type of government organization shall be set up in each territorial unit ?

Unitary and Federal Government. For the student of political science the fundamental question is, What authority has the legal right to determine the distribution of governmental power territorially, especially in the adjustment between the national government and its main subdivisions ? Two systems are found in modern states, resulting in two distinct types of government. In one the constitution of the state delegates all governmental power to the national government, which may create such subdivisions and delegate to them such powers as it sees fit, changing their boundaries or their powers at its pleasure by ordinary legislative enactment. This system creates a unitary government. In the other system the constitution of the state definitely provides for both a national government and the main subdivisions, dividing the powers of

[1] H. C. Morris, *History of Colonization*, 2 vols.

government between them. Under this arrangement neither the national government nor that of its main divisions can change the other or legally interfere with the exercise of the powers that belong to it. Only by constitutional amendment can any readjustment be made. This system creates a dual, or federal, government.[1] Most modern states have adopted the unitary form of government ; the United States, Switzerland, Canada, Australia, and some of the Latin-American states have adopted the federal form.[2]

While the subdivisions of government in a unitary state are merely agents of the national government and may be created or altered, and their powers enlarged or contracted, at its will, nevertheless the national government may grant to them a considerable sphere of local autonomy and self-government, as is done in Great Britain. In the countries of continental Europe the powers granted to the subdivisions are subject to wide control by the national government, even when those powers relate to matters of local interest. In the federal form of government the main subdivisions of the state are autonomous units, having their own constitutions and political systems. While they are not sovereign states and cannot legally withdraw from the union or exercise powers that are constitutionally delegated to the national government, neither can the national government destroy them, or modify their boundaries without their consent, or interfere with their powers. It is quite possible that the actual powers granted by the constitution to the constituent members of the federation may be less in practice than those delegated by the national government to the local subdivisions in a unitary state. The test of a federal system is not the extent of the powers exercised by the subdivisions, but their legal status and the source of their authority.

[1] It would be quite possible for the national constitution to provide also for the status and powers of the smaller local divisions, such as cities, for example, In this case a triple form of government would exist. No such system has yet been tried.

[2] The constitution of Russia creates a federation of Soviet republics, each having considerable local autonomy and even the right to secede. In practice, however, the Russian state is highly centralized under the unitary control of the leaders of the Communist party.

The creation of unitary and federal systems of government waa largely the result of the historic development of modern national states. As a growing national spirit and improved methods of organization tended to expand the areas of political units, two methods were mainly followed. One was that of complete fusion, the separate governments of the combining units being merged into a single organization. Sometimes this took place voluntarily and peacefully when a spirit of nationality was well developed and local differences were slight. Usually it resulted from conquest and expansion, as a more powerful state extended its boundaries, regardless of the wishes of the peoples that it incorporated and at the expense of their local political organizations. By both these processes, however, states with unitary governments were formed. The component parts either lost their identity completely or became mere districts of administration, subordinated legally to the authority of the central government.

The other method was that of voluntary federal union. States whose nationality or situation and needs were such as to make union desirable, but whose local differences and jealousies were too great to permit complete amalgamation or whose strength was too nearly equal to make conquest possible, were able to unite on this basis. The component parts retained their governments, with constitutional rights over certain matters, but they lost their sovereignty to the new state that was formed by the union. A central government was created with certain powers, but neither central nor local government could legally encroach upon or destroy the other. Such a state was usually formed after a gradual process, passing through various degrees of alliance and confederation before the necessary spirit of unity was created. The United States, Switzerland, and Germany passed through this development. A few states, such as Brazil and Mexico, deliberately adopted the federal system, not as a means of union but through imitation and as a method of adjusting national and local interests. In these cases the formation of the federal system was the result not of the concurrent action of the members but of initiation and action by the central government of a former unitary state. A somewhat similar

procedure was followed in the federation of a group of colonial dependencies in Canada, in Australia, and in South Africa.

Sovereignty in the Federal System. The political process by which a federation is formed and the location of sovereignty within it have been much disputed questions, especially in the United States and in Germany. It has often been held that a federation is formed by a voluntary union of sovereign states, as if a new state could be created by a compact among states. Evidently such an agreement would be merely a treaty, since by that method alone can states enter into mutual relations. Besides, such a compact would be valid only as long as the contracting states retained the sovereignty that made them competent to enter into it. By a contract it is impossible to create an authority superior to the contracting parties; hence a union formed on this basis could be nothing more than a confederation of sovereign states. No single sovereign would exist; each state would be competent to determine its own rights and powers or to withdraw from the agreement if it chose, and any common government that might be created would derive its authority from the individual states that it severally represented.

A federation, however, is a single sovereign state. It derives its legal powers from a constitution, not from a treaty. In forming a federation, therefore, it must be held that the former separate states disappear, their sovereignty being destroyed; and the people of those states, having divested themselves of the old allegiance, create, on the basis of national unity, a new sovereign state. The formation of a federation is legally a revolutionary act, and the sovereignty of the new state rests, not on former legal authority but on the consent of force upon which sovereignty always ultimately rests. Under the constitution of the new state the former states reappear as commonwealths in a federal system; but their sovereignty is gone, and however powerful their historic traditions may be or however large may be the powers left to them, they owe their position and powers to a superior authority and have no legal status except in the union.

In a federation, then, sovereignty is located neither in the central government nor in the commonwealths. Neither is it

divided between them, as many writers in the early nineteenth century held. Sovereignty is a unit and cannot be divided, though the exercise of governmental powers may be distributed among various organs. Sovereignty resides in the state itself. Both the central and the commonwealth government are its agents, neither being able to destroy or to dominate the other. In the federal constitution both systems of government are created and their respective powers outlined ; and in the sum total of all legal lawmaking bodies in the state, national and local, including those bodies that may legally amend the constitutions, the exercise of sovereignty is vested. If sovereignty is located in the central government alone, the federal system is destroyed and a unitary state results ; if sovereignty is located in the member units, the result is not a federal state but a league or confederation of sovereign states.

Distribution of Powers in the Federal System. In the federal form of government the distribution of powers between the central government and the local subdivisions becomes of prime importance. In general, the principle is followed that affairs of common interests which require uniformity of regulation are placed under the control of the central government, while matters that are of local concern or that require different treatment in different sections of the country are left to the local units. The central government is usually given control over certain functions essential to state existence, such as the maintenance of the army and navy, the control of war and peace, the conduct of foreign relations, the raising of revenue, the regulation of foreign and interstate commerce, the coinage of money, and the regulation of the postal system, of patents and copyrights, and of naturalization. At the other extreme stand affairs of local concern alone, or those demanding different treatment because of sectional differences, which are properly left to the governments of the component units.

Between these lies a vast field of interests concerning whose control the practices of modern federations and the opinions of statesmen show marked divergence. This list includes such questions as the regulation of transportation and communication, of labor, of marriage and divorce, of public education,

and of civil and criminal law. In the authority granted to the central government over interests of this type the constitutions of federations differ. That of the United States is practically silent on these points, and the clause leaving to the commonwealths all powers not expressly granted to the national government evidently was intended to remove such matters from national jurisdiction. The constitution of the German republic granted to the central government authority over railroads, civil and criminal law, banking, insurance, and other matters. In Switzerland the central government has authority over factory labor, marriage, civil and criminal law, insurance, and has a certain amount of control over religion and education. In Canada the Dominion Parliament may legislate on trade and commerce, banking, marriage and divorce, criminal law, and many other questions.

In distributing the powers of government between the central and local governments in federal systems, two methods have been followed. In most of them the powers conferred on the central government are specifically enumerated in the constitution, and all the remaining powers except those specifically prohibited are left to the local units. Under this system the central government possesses delegated powers, while the local subdivisions possess residuary powers ; and in case of dispute the presumption in law is against the claim of the central government to exercise any power that is not specifically granted to it. In Canada, however, the local governments are granted specially enumerated powers, while the central government is given certain specific powers and general authority over all matters not definitely granted to the subdivisions.

In some federal systems the central government creates its own governmental organization for the enforcement of its laws in all parts of the country. In others the central government depends largely upon the officials of the local government for the enforcement of national law. The latter system has the advantage of avoiding considerable duplication of administrative machinery, but the disadvantage of frequent failure on the part of local officials to enforce national laws against which there may be strong local sentiment. The central gov-

ernment is sometimes given a certain control over the organization and actions of the government of its subdivisions. Thus, in the United States, it is the duty of the national government to see that a republican form of government is maintained in the major subdivisions. In Canada the Dominion Parliament may set aside acts of the provincial assemblies. In the former German republic the national government could compel the members of the union to perform their constitutional duties. In the United States the national government may use force against a state, if necessary, to protect national property or to enforce national laws or court decisions.

During the past century there has been a marked tendency toward increasing the authority of the central government in states of the federal type. This is partly owing to the changing conditions of modern life. Large-scale production, the development of transportation and communication, wider markets, and increasing interdependence of sections formerly economically independent cannot fail to affect correspondingly the powers of government. Not only is the spirit of unity increased, but interests formerly local outgrow regulation by any except the widest governmental authority. Modern business is national or even international rather than local. Besides, the creation of a federation is itself a step toward further unity. The existence of a common government, whose working becomes increasingly familiar to all citizens, cannot fail to strengthen the national spirit, whose beginnings the federation at least indicated. Common action, particularly in war and foreign relations, increases national at the expense of local patriotism ; and the former independent units that formed the federation tend to become for many purposes mere convenient districts of administration for national functions.

In adjusting the legal distribution of powers to this tendency toward national unity several methods are in use. An easy method of amendment, by which changes in conditions and in sentiment may express themselves through the written constitution, redistributing authority as occasion demands, is one way of meeting the situation. The constitution of Switzerland, which demands for amendment only the assent of a majority of the voters and of the component cantons, is

an example. The plan of concurrent jurisdiction, in which the powers of the governments are not declared exclusive, allowing the local governments to act when the national government has not done so, provided that their acts are not inconsistent with national laws, serves a similar purpose. In this way the central government may expand its authority as national development requires by passing uniform regulations concerning matters which it formerly left to local regulation. This method avoids to some extent frequent tinkering with the constitution. Such concurrent jurisdiction was provided in the constitutions of the former German Republic and of Australia.

When the constitution excludes each government from sharing in the authority of the other and is also difficult to amend, neither of these processes is possible. If, in addition, the powers granted to the central government are specific and limited, the situation is particularly difficult. This is the case in the United States, and has been met in a peculiar way. By assuming the right to review legislative acts, and by applying the doctrine of implied powers, the Supreme Court, in interpreting the Constitution, has stretched its meaning to give the central government authority never dreamed of by its creators. The brevity of the Constitution, making an elastic interpretation possible, has enabled a constitution, framed at a time when local differences and jealousies prevented large grants of national power, to adapt itself to the growing spirit of national unity and to the changed conditions of modern life.

The question of where the final authority lies to decide whether or not the two systems of government are keeping within their constitutional powers is fundamental in a federal system. In all federations this power is located in some part of the central government, since it would be dangerous to the sovereignty of the state to place it in the hands of the component members. In some federations, such as Switzerland and the former German empire, the constitution is placed under the guardianship of the national legislature, whose decision is final in case of disputes between the central and local authorities. In these states legislative supremacy exists. In others, such as the United States, and to a less extent Canada, Australia, and some of the Latin-American federations, the

highest national court decides disputes in order to maintain the constitutional balance of power between central and local governments. In these states judicial supremacy exists.

Advantages and Disadvantages of Unitary Government. The unitary form of government is best adapted to small states that possess geographic and ethnic unity, where uniform legislation can deal successfully with the needs of all parts of the country. It is also suited to a state whose population is not yet politically developed and hence not fitted for local self-government. The strength of the unitary system results from the uniformity of law and administration throughout the whole country. It avoids the danger of inefficient enforcement by local officials in regions that oppose the national policy, and the wastefulness and extravagance that often result from the duplication of governmental machinery in a federal system. The strength of the centralized, unitary form of government is useful also in the field of foreign policy and in time of war. Political interest centers in the national government, and a single patriotism, unweakened by local traditions and jealousies, is likely. The unitary system is also more flexible. The constitution-making body does not concern itself with the territorial divisions of the country nor with the problem of distributing governmental powers between them and the central government. The satisfactory performance of these tasks on a permanent basis is almost impossible, and they are treated as matters of internal organization to be decided from time to time by the government itself. As conditions change, and a readjustment of the powers of the central government and of the local subdivisions becomes desirable, such changes can be made by gradual legislation, instead of by the slower and more difficult process of revision of the constitution. In the unitary system all the powers of government are concentrated in a single set of authorities, so that the entire force of the government can be brought to bear upon the problem of administration. There can be no conflict of authority, no confusion regarding responsibility, no duplication of work, and no overlapping of jurisdiction.

The chief weakness of the unitary system is the absence of local self-government. There is danger that the central autho-

rities, remote from the people, will determine policies and regulate matters that are of concern only to particular localities. Not only does this cause frequent delays, during which local interests suffer while waiting for a decision from the overburdened central officials, but the decisions are often made in ignorance of local conditions and are administered by officials who know little about local needs and desires. The unitary system thus tends to discourage popular interest in public affairs and to repress local initiative. It tends to develop a centralized bureaucracy, which follows routine methods instead of making flexible adjustments. It is not suited to a state of large size, where there are a wide variety of local conditions and a diversity of political standards and ideas. Neither is it satisfactory to a people with a well-developed political consciousness and an ardent love of local liberty. The unitary system will work successfully in large democratic states only if the central authorities are willing to delegate large powers in local affairs to the local authorities. Many French writers criticize the unitary system as it works in their country and argue for a decentralization of governmental powers.

Advantages and Disadvantages of Federal Government. The chief purposes for which states exist may be summarized as external protection and internal regulation. From the standpoint of the former, extension of the state over a considerable area is desirable, both in removing the possibility of conflict among separate units and in substituting law for war or diplomacy in settling their disputes, as well as in increasing the efficiency of the whole. In former times conquest was the only effective method of state extension. In this process the weak were subordinated to the strong, often with the loss of their political privileges ; and danger of external conflict was merely changed to danger of internal revolt as soon as opportunity offered. From the standpoint of internal regulation the only effective method known to early states was that of rigid uniformity, enforced by a central authority over the entire area of the state. This policy of external conquest and internal uniformity was perfected by Rome. However, it sacrificed the individual, prevented progress, and fell to pieces from the evils inherent in it. What was needed was a method by which

small units could unite peacefully without sacrificing their political life, so that each part could form a contented and integral part of the whole. Besides, some method had to be found to combine uniform regulation of common interests and local control of local affairs, so as to provide both stability and progress, union and liberty.

The federal form of government was devised to solve this problem. Voluntary union on practically equal terms made possible incorporation without conquest. The control of general interests by a central government, and the leaving of questions that differ in different sections of the country to the people of those areas for solution, combined the strength that results from unity with the vitality and progress that result from variety. In external affairs and in national matters a consistent policy may be followed ; at the same time, each internal unit may shape its laws in conformity with local customs and conditions. People are willing to delegate large powers to a somewhat remote central government if they retain control over the local affairs that more directly affect their ordinary life. With the exception of representation, probably nothing has done more to make democracy workable over large areas than the system of federal government ; and in federal government the principle of representation is simply carried one step further, the local units sending their representatives to the national legislature.

The federal form of government stimulates interests in political activity, enables small areas to try experiments that might be dangerous if applied to the entire country, diminishes the dangers that threaten a state composed of diverse nationalities or interests, and relieves the central government of many burdensome functions. It is especially suited to states of vast area and diversity of conditions, or to states whose populations are divided by geographical, racial, or other barriers, and who can be reconciled to political unity only if allowed a considerable degree of local autonomy. Under special conditions federation is particularly valuable. It enables a growing spirit of nationality and unity to manifest itself, even though local differences are powerful enough to prevent complete fusion ; and, as a means of expansion and develop-

ment in a new country, allows special needs to be met as they arise and frontier conditions to be dealt with in a way unsuited to longer-established sections. The formation of Germany and the United States, and the expansion of the latter, are examples. Federalism has thus been the means of uniting many small states which otherwise would never have surrendered their independence ; at the same time, in the internal organization of the large state formed by their union, the federal system has prevented the rise of a despotic, bureaucratic authority and has conserved the political liberty of the people. Many writers have extolled the merits of the federal principle, and have urged its further application in the formation of larger political units, even to the extent of a world federation.

The federal form of government, because of its very nature, has certain inherent weaknesses. If disputes and divided authority that should be limited to internal affairs are carried into foreign relations, a federation is handicapped when opposed to a more centralized state. The members of the federal union, because of their rights over persons and property and their right to legislate in certain matters, may seriously embarrass the national government in enforcing its treaty obligations. The experience of the United States bears witness to this difficulty.[1] At the same time, central government, by making treaties, may encroach upon powers which the constitution intended to leave in the hands of the states.

The expense and delay caused by a double system of government, in which much work is needlessly duplicated, are recognized as serious objections to federal government. There are also serious difficulties in the administration of justice caused by the network of political boundaries with independent jurisdictions. Unwilling witnesses may leave the jurisdiction where their testimony is needed ; property may be removed to another jurisdiction to avoid taxation ; and troublesome extradition proceedings are necessary in order to bring back fugitives from justice who flee from the region where the crime was committed. The defects of the federal system would be diminished if the boundaries of the political divisions could be drawn in accordance with political needs.

[1] See *American Journal of International Law*, Vol. I. p. 273.

These boundaries, however, are seldom the result of deliberate action, but are usually of historical development, being those of the original sovereign states that combined to form the union. Once made, they are difficult to change, with the result that the subdivisions seldom correspond to the real political needs of the country. A properly devised system of political units should meet two requirements. The districts should be sufficiently unlike in their conditions and problems to warrant their separate political authority and organization, and each district should be sufficiently homogeneous to have essential unity of political interests. The actual subdivisions of those federations that were formed by historical development seldom conform to these requirements. In most cases the number of units could be reduced to advantage if constitutional difficulties and local pride did not prevent such action.

A fundamental difficulty in the federal form of government results from the division of lawmaking power between two distinct governmental systems. There is always the danger that there may be diversity of legislation concerning matters that should receive uniform treatment, or that centralized control will be exerted over matters that should be left to local decision. The proper adjustment of central to local authority thus becomes a constant source of difficulty, and the danger of the formation of sectional factions or even of rebellion is always present. Frequent disputes concerning the respective powers of national and commonwealth governments and disputes among the commonwealths themselves have marked the history of the United States. As conditions change, readjustments of power are constantly needed, especially in the field of economic interests. In recent years the defects of federal government have become particularly noticeable as a result of the growing complexity of industrial conditions. Many questions which formerly could be left safely to the separate units for decision now demand regulation on a larger scale. If industrial integration, which seems to be the present method of economic development, continues, the federal form of organization may be compelled to give way to a more centralized government capable of regulating or, if need be, of taking control of the extensive economic activities of

modern civilization. In all modern federations the national government is extending the scope of its powers and is increasingly looked to for financial assistance and for regulatory measures.

Naturally, then, there is considerable difference of opinion concerning the future of federal government. It is obviously unsuited to a people disinclined to respect the law and unwilling to acquiesce in frequent compromises. Any attempt to fix specifically and permanently the respective powers of the central government and of its subdivisions will be defective, since these powers will ultimately cease to be in harmony with changed conditions. The form of organization suited to one people or to one time may be unsuited to another society or another stage of development. The federal system was created by the needs of its times, and, having accomplished its purpose, it may prove to be but the transition stage to a more efficient system. At the same time, there are certain advantages inherent in federalism, and some of its contributions to political methods will probably be permanently valuable. While federal states show signs of closer unification, unitary states are adopting many features of federalism. The reorganization of the British system in the relations among the self-governing dominions and Great Britain, and the establishment of a group of Russian Soviet republics, are the most conspicuous recent examples. Many writers predict a further unification of states, at present independent, on a federal basis.

Conclusion. It should be noted that the classification of governments on the basis of functional separation into presidential and cabinet types, and on the basis of territorial division into unitary and federal types, is a cross classification. The functional separation of departments reappears in each of the territorial subdivisions. In a unitary state the central government, created by the constitution, may be either of the presidential type, as in certain Latin-American states, or of the cabinet type, as in Great Britain and France. The local subdivisions in a unitary state will have whichever type the central government creates for them or permits them to create. In a federal state the central government, created by the constitution. may be either of the presidential type, as in the

United States, or of the cabinet type, as in Canada. The subdivisions of the federal state may adopt whichever type they prefer, unless there are legal restrictions in the national constitution which prevent. In practice, the subdivisions of federal states usually adopt the same form that obtains in the central government. Thus the states in the American unions have set up the presidential type of government, while the Canadian provinces have adopted the cabinet system.

The smaller local subdivisions are agents of the central government in a unitary state. Under the federal form of government the smaller local subdivisions are agents of the governments of the component members of the union. The central government in a federation may, however, retain control over certain special areas, such as the District of Columbia in the United States, and over regions not yet fully admitted into the federal union, such as the territories and colonial dependencies of the United States. In creating the smaller local districts a regular and symmetrical system of division and subdivision may be followed, with no overlapping of boundary lines, or special districts may be created for particular purposes with little attention to the boundaries of other districts, with a number of overlapping boundaries as a result. If the central government retains a large measure of control over the local districts and grants to them limited powers of local self-government, a centralized system exists. If the local areas are given large and independent powers, a decentralized system exists. The usual belief that a unitary state is always centralized and that a federal state is invariably decentralized is not necessarily true. It is quite possible, as in Great Britain, for the central government of a unitary state to grant large powers of local self-government to its local subdivisions, thus securing most of the advantages of both the unitary and the federal type. It is also possible, as in some Latin-American states, that the actual amount of local self-government in a federal system may be relatively small. In comparison with other countries, France has a centralized government not because it has adopted the unitary form, but because the central government, instead of granting large powers of discretion to its local agencies, attempts itself to administer local affairs directly.

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CHAPTER XV

CONSTITUTIONS

OUTLINE

Nature of a Constitution. The fundamental principles that determine the form of a state are called its constitution. These include the method by which the state is organized, the distribution of its sovereign powers among the various organs of government, the scope and manner of exercise of governmental functions, and the relation of the government to the people over whom its authority is exercised. The constitution does not create the state, but is the outward formulation of state existence. Every state, therefore, has a constitution, in the sense that certain principles underlie its existence and its governmental system. If this were not true, anarchy would result instead of political organization. Sometimes the constitution of a state is definitely formulated in a single document or a series of documents ; sometimes it is found in an established body of rules, maxims, and traditions in accordance with which its government is organized and its powers are exercised. Constitutional government is distinguished from personal government in that it is based not on the caprice and whim of those who possess political power, but on rules so clearly defined and so generally accepted that they control effectively the actions of public officials. It is a government of laws and not of men. A constitution therefore may be defined as a collection of norms by which the legal relations between the govern-

ment and its subjects are determined and in accordance with which the power of the state is exercised, or the body of rules and maxims in accordance with which the powers of sovereignty are habitually manifested.

Constitutions have been classified on the basis of several distinctions :

1. *Written and unwritten.* A written constitution is one in which most of the fundamental principles of governmental organization are contained in a formal written instrument or instruments deliberately created. It is usually considered of special sanctity, different in character from other laws, proceeding from a higher source, and alterable by a different and more difficult procedure. An unwritten constitution is one in which most of the fundamental principles of governmental organization have not been reduced to definite written form or embodied in basic documents. It consists rather of a mass of customs, usages, judicial decisions, and statutes enacted at different times. It was not created by a constitution-making body, but resulted from the gradual historical growth of the state.

The distinction between written and unwritten constitutions is one of degree rather than of kind. All written constitutions that are in existence for a considerable period accumulate a large unwritten element. They are modified by custom and usage and by judicial interpretation. Political practices grow up that are not incorporated into the written document, so that its text does not correspond accurately with the existing form of political organization and powers. In the United States, for example, the organization and powers of political parties, the method of nominating and electing the president, the procedure of Congress, and the powers of the federal judiciary rest upon political usage, not upon the written constitution. A reading of the constitution of the United States would give a very inadequate and inaccurate description of the actual constitution of the American republic as it works in practice. On the other hand, the constitution of Great Britain, though not formulated in a single document, contains a considerable written element, scattered in many documents of

different periods. Magna Charta, the Bill of Rights, the important acts of Parliament concerning the powers of the Crown and of the House of Lords, and those that fix the qualifications for voting and the system of representation in the House of Commons form an important written element in the British constitution.

2. *Flexible and rigid.* The distinction between a flexible constitution and a rigid one rests upon the method by which the constitution may be changed, and the relation, therefore, which it bears to ordinary laws. If a constitution may be easily amended by the ordinary lawmaking body and procedure, it may be classed as flexible. In this case constitutional law emanates from the same legal authority as ordinary law and has no superior validity. If a constitution requires a special organ or a more difficult procedure for amendment than that required for the creation of ordinary law, it may be classed as rigid. Its lines are thus fixed and emanate from a source different from that of ordinary laws, which must keep within the bounds fixed by the constitution. For the successful working of a rigid constitution it is necessary that some organ of government should have the power to decide whether or not laws made by the ordinary government keep within constitutional limits. A law which the constitution forbids, or a law made by a body which has not been given authority by the constitution to act in that field, would be an unconstitutional law ; hence, not a law at all. The constitution of Great Britain is an example of a flexible constitution ; that of the United States is rigid.

3. *Historical and theoretical.* A historical constitution is one that grows through evolutionary experience or that incorporates long-established forms and practices of government. A theoretical constitution is one founded on speculative assumptions or abstract ideals. The constitutions created in France after the Revolution, and the utopian schemes proposed by Plato, More, Bacon, and Harrington, are examples of the latter type.

Requisites of a Constitution. There are several characteristics that a good constitution should possess. It should be definite. In order to avoid occasion for dispute, there should

be no question as to what the constitution is or what it means. In this respect the written parts of a constitution, if carefully worded, are more satisfactory than unwritten customs and practices. The tendency in legal development has been toward definite statement, so that the law may be known and preserved.

A constitution should be comprehensive, that is, it should cover the whole field of government. In a general way, at least, it should make provision for the exercise of all political power and sketch out the fundamental organization of the state. At the same time, a constitution should be brief. In outline alone should the constitution organize the state. An elaborate and detailed constitution offers many possibilities for dispute as to meaning. Besides, a detailed constitution indicates distrust of government. Legislatures deteriorate and avoid responsibility if matters of importance are removed from their authority and decided in the constitution. Finally, a detailed constitution is soon outgrown. New conditions render some of its provisions obsolete, and, whether by frequent amendment or by strained interpretation or by the growth of practices outside the constitution or by nonenforcement, it becomes unstable and unrespected. Details of governmental organization and policy are not properly constitutional matters, but should be left to the ordinary lawmaking powers of the government. The constitution of the United States contains about four thousand words. The newer constitutions of European states are more elaborate. The constitutions drawn up in recent years by some of the American commonwealths contain upwards of fifty thousand words, including minute regulations that have no proper place in a constitution.

The proper contents of a constitution demand consideration. A constitution is intended primarily to set up a framework of government. Its purpose is to outline the nature, method of selection, and powers of the various organs of government, and to prescribe the general manner in which their powers shall be exercised. It indicates the various departments and divisions of government. A constitution should also provide a legal method of amendment, so that it may be changed without revolution. A constitution should be stable and at the same

time flexible. In fixing the method of amendment a compromise is needed which will permit changes to be made and at the same time will insure that changes will not be made until it is certain that they represent the real and not merely the temporary needs and desires of the people. There is also an advantage in including a Bill of Rights, which sets aside a certain sphere of individual liberty with which the ordinary government is forbidden to interfere. The constitution, therefore, prevents the encroachment of one organ of government on another or on individual liberty. In a word, it locates sovereignty within the state, since, in outlining the powers of the various governmental organs and in providing a method of legal amendment, it makes arrangement for the total exercise of lawmaking power. The action of any organ outside the scope of its legal competence, or in any manner except that prescribed, is not a legal act of the sovereign state, but a revolutionary usurpation of power. An "unconstitutional law" is thus a contradiction in terms. If it is unconstitutional it is not law. When a law is declared unconstitutional, it is not considered that a lower law has come into conflict with a higher law, but that the law in question never was law, since it was not properly created.

There is, then, no difference in validity between constitutional law and statute law. Each, if legally created and enforced by the authority of the state, is law, equally binding. From a legal standpoint all laws are commands of the sovereign, enforced by its authority. Any organ of government, acting legally within the scope of its powers, creates law just as binding as the constitution. A distinction between constitutional law and statute law may be made as to the method of creation and as to content. Statute law is created by the regular legislative organs of the ordinary government. Constitutional law in many states is created by a peculiar organ of government or by unusual procedure on the part of the ordinary government. In some states, as in Great Britain, even this distinction does not exist, since constitutional law is created and repealed by the ordinary government. As to its content, constitutional law properly deals with the fundamental organization of the state. The minor details of government and the ordinary relations of

man to man are properly left to statute law or to admininstrative regulation.

A final requisite for a good constitution is that the constitution shall correspond to actual conditions within the state, Sovereignty should be legally distributed in accordance with actual political power ; that is, the legal sovereign should coincide with the political sovereign, otherwise there is constant danger of revolution. No constitution can be perfect and permanent, since the best form of government is a relative matter, changing as conditions change. A constitution, therefore, should be flexible enough to permit change when necessary ; at the same time its modification should not be so easy as to sacrifice stability. The adjustment of these requisites depends largely on the legal method of amendment.

Methods of Establishing Constitutions. History shows four methods by which modern states have acquired their constitutions : by grant ; by deliberate creation ; by revolution ; by gradual evolution.

Most modern states began with autocratic governments in which all political authority was vested in the rulers and was defined only in a general and indefinite manner. Later, either because the ruler believed that the powers of government and the manner of their exercise should be defined in a more formal and legal manner or because of the demands of his subjects and the fear of revolution, the ruler promulgated a formal document in which he agreed to exercise his powers in accordance with certain principles and through certain agencies and procedure. Such charters, or constitutions, are said to be octroyed, or issued by royal fiat. While such a document could logically be changed by the ruler at his pleasure, it has usually been considered by the subjects as a pledge, or contract, which the ruler was bound to observe, and in some cases the ruler agreed not to change its provisions without the consent of the people. In practice such agreements have placed limitations upon royal power which have been difficult to remove, and have often marked the beginning of democratic development. Charters of this type were granted by various German princes, by Louis XVIII in France, by Napoleon

to states that came under his dominion, by the emperor of Japan, and by others. In granting the constitutional charter of 1814, Louis XVIII stated : "We have voluntarily, and by the free exercise of our royal authority, accorded and do accord, grant and concede to our subjects, as well for us as for our successors forever, the constitutional charter which follows."

A number of constitutions have been deliberately created after the establishment of a new state. The constitution of the United States is an example of this method. Constitutions were set up in this manner by the Poles, the Czechoslovaks, the Yugoslavs, and others after the First World War, when they were recognized as sovereign states. Constitutions of this type are possible for people who have previously had considerable political experience. A more usual method of establishing a constitutional system is by internal revolution. This occurs when people become dissatisfied with the existing form of government and are not able to change it in a legal manner. Revolutions occur when people are oppressed and misgoverned and when they believe that the government should rest on a different principle. In case of revolution stable government is usually secured only after considerable violence and disorder. Sometimes the provisional authority which guides the revolution assumes the power to create a new constitution, which it may submit for popular approval ; sometimes it provides for the assembly of a special body to create a new constitution, or to draw up such a document and submit it to the people for their acceptance. Constitutions were created by such revolutionary methods in the American states ; in France after the French Revolution and after the Franco-Prussian War ; in Russia in 1917 ; and, more recently, in Spain.

Finally, a constitution may come into existence as the result of slowly working evolutionary changes. Beginning with an autocratic government, power may gradually pass in fact, though not in law, to persons who represent the people. By long acquiescence, and by the growth of political practices, the authority of the latter may finally be recognized as legal. A constitution of this type will be largely unwritten or will appear in a series of documents rather than in a single, comprehensive statement. Its essential character can be determined

only by its actual workings and not by its legal form. The constitution of Great Britain is the best example of this type.

Written and Unwritten Constitutions. The idea of a constitution as a fundamental set of rules in accordance with which the state is organized was not unknown in the ancient world. Aristotle made a collection of the constitutions of the states of his time, and in his *Politics* he discussed the best form of constitution and defined a constitution as "the organization of offices in a state" which "determines what is to be the governing body and what is the end of the community." The Romans also made a distinction between the power to make constitutional law and the power to make ordinary law. During the Middle Ages the rights of cities and corporations were often defined in written charters, and concessions were sometimes wrung from the kings in written documents which defined certain rights and which were considered as contracts between rulers and subjects.[1] In the sixteenth century, in the writings of that group who were opposed to absolute power, appeared the idea of a "fundamental law," superior in authority to ordinary law ; and the term "constitution" was sometimes used in connection with important documents and statutes. During the controversy between the Stuart kings and Parliament, in the seventeenth century, the idea of a constitution was discussed by various writers.[2]

Among the immediate precursors of written constitutions may be mentioned the "Mayflower Compact" (1620) ; the "Fundamental Orders of Connecticut" (1639) ; the charters granted to the English colonies in America ; the "Agreement of the People," drawn up by Cromwell's soldiers (1647) ; the "Instrument of Government," issued by Cromwell (1653) ; and the "Frame of Government," prepared by William Penn for the colony of Pennsylvania (1682). By the close of the seventeenth century the term "constitution" was frequently applied to the fundamental laws which related to the organization of government. The concept was given added authority by

[1]For example, the Constitutions of Clarendon, 1164 ; Magna Charta, 1215.
[2]A. Sidney, *Discourses Concerning Government* (1698) ; J. Harrington, *Oceana* (1656).

the prevalent theory that the state was created by a social contract, or covenant, by which the people voluntarily agreed to set up a body politic, and that government rested upon a definite contract between rulers and subjects.

The distinction between fundamental law and temporary statute law was as clearly drawn by Vattel in his *Law of Nations* (1773). He states that "the laws made directly with a view to the public welfare are political laws ; and in this class are those that concern the body itself and the being of society, the form of government, the manner in which the public authority is to be exerted, those, in a word, which together form the constitution of the state, are the fundamental laws."[1] These laws, Vattel argued, should be changed only by the people themselves, and not by the legislature. His book was widely read in France, England, and America, and exerted considerable influence on the constitution-making period which soon followed. Blackstone's *Commentaries on the Laws of England* (1765-1769), which formulated clearly the principles of the English government as they were then understood and which appeared at a critical time in the history of constitutional government, also exerted a wide influence, especially in America. The American doctrine that sovereignty resided in the people and that the government should act as their agent, receiving delegated powers, also contributed to the belief that a written constitution was desirable in order to keep the government within legal bounds.

In America the most direct influence was exerted by the colonial charters, which had been cherished in the colonies and which had served as a basis for colonial self-government. Accordingly, most of the American colonies, after they declared their independence, adopted written constitutions. Two of them, Rhode Island and Connecticut, however, continued their government under colonial charters, which served as written constitutions. When the American union was formed, it was even more necessary to set forth the principles of the new government in a written constitution (1789) in order that the

[1] *The Laws of Nations*, p. 9.

powers of the central government then established and those of the states, which were continued in existence, should be fixed with a definiteness that would avoid conflict. America was the home of written constitutions, and the constitution of the United States is the oldest written constitution in existence. The American example was followed by France in the series of written constitutions drawn up during the French Revolution. From France the idea spread to other European countries, and a demand for written constitutions was an important element in the revolutionary movements of the nineteenth century. More than three hundred constitutions were promulgated in Europe between 1800 and 1880. At the present time, with the exception of Great Britain, every state of importance has a written constitution of some kind.

Both written and unwritten constitutions have elements of strength and weakness. A written constitution is usually prepared with care and deliberation, and is likely to be more clear and definite than one consisting largely of usages and customs. Since a written constitution usually provides a special procedure for amendment, it cannot so easily be twisted by the ordinary legislature to meet every popular change of opinion, and is therefore more stable and permanent. On the other hand, difficulty of amendment often retards needed reform, and the constitution fails to keep pace with changing conditions. A written constitution may become outgrown and may act as an obstacle tö political progress. Provisions put into a written constitution are also often difficult to remove, even though widespread public opinion finds them undesirable. The advantage of stability is thus offset by the disadvantage of rigidity. It is often held that a Bill of Rights in a written constitution safeguards individual liberty, acting as a check on the arbitrary authority of government. While there is an advantage in a definite formulation of civil rights, and a certain sanctity attached to them when placed in the constitution, their actual guaranty depends upon whether or not the provisions of the constitution may be changed by the ordinary legislative procedure and upon whether or not the courts may impose a legal check on unconstitutional activities on the part of the other organs of government. In practice, individual liberty may be as well

protected in a state whose constitution is unwritten as in one where elaborate constitutional provisions are found.

An unwritten constitution has the advantage of being flexible and adaptable to changing conditions. It affords a legal means of adjusting the constitution to popular demand and prevents the danger of disregarding a constitution which is difficult to change. This elasticity is especially valuable in times of crisis or of rapid social change, but is workable only by a people who have a conservative spirit and a strong sense of historical tradition. If a constitution is unwritten, it at least avoids the danger of a document framed on purely theoretical considerations which bear little relation to national experience and needs. Unwritten constitutions have been criticized because they provide for no distinction between constitutional and statute law, and because they give too much power to the judiciary to discover constitutional principles in a long-accumulated mass of customs, laws, and decisions. Some writers believe that unwritten constitutions are not suited to democracies, which demand a written and definite statement of fundamental principles and which are suspicious of governmental powers that are indefinite and discretionary. An unwritten constitution demands a high degree of political intelligence and constant vigilance on the part of the people to resist governmental usurpation. For an ignorant or turbulent people a rigid constitution is probably safer than one subject to every whim of popular emotion.

Expansion and Amendment of Constitutions. No constitution can be considered perfect or permanent. As stated by Washington in his Farewell Address, time and habit are necessary to fix the true character of governments as of other human institutions. Constitutions grow in various ways. Custom and usage create new principles in the case of unwritten constitutions, and add to or modify the established system where a written constitution exists. Growth by this process is likely to be greater in an old than in a new constitution, and in an old and settled civilization, where reverence for tradition and precedent in greater than in a new, or frontier, society. It is also more likely where the constitution is brief and general than where the constitution is elaborate and detailed.

If legislative supremacy exists,—that is, if no organ of government can declare unconstitutional a law passed by the national lawmaking body,—considerable expansion of the constitution may result from ordinary legislation. Laws may be passed which violate or modify the constitution, and the only way to check this tendency is for the electorate to choose representatives that will keep within the legal limits of the written constitution. If public opinion approves the changes made by the legislature, this method of expansion permits easy adjustment of the constitution to new conditions.

The fact that differences of opinion will arise concerning the meaning of the language of the most carefully framed constitution leads to expansion by judicial interpretation. Deficiencies in expression compel the judiciary to state the true meaning of the constitution and to determine the intention of its framers. A written constitution which has been in existence for a considerable period will naturally fail to make provision for needs which did not exist when it was framed. In this case the judiciary, by "construction," must fill the gaps in the constitution, either by expanding its provisions to cover the new cases or by assuming the action that would have been taken by its framers in case they had been able to foresee the new conditions. If, as in the United States, the judiciary may set aside legislative enactments which they consider in violation of the constitution, the power of the judiciary to modify and expand the constitution by interpretation is enormous. The constitution of the United States has been changed to a far greater degree by this process than by any other.

From the point of view of political organization and of the distribution of the sovereign powers of the state, the most important method of constitutional change is the formal and legal one of amendment provided for in the constitution itself. Some of the early written constitutions contained no provision for legal amendment. Those granted by monarchs usually assumed that changes would come from the same source, and in some of the early popular constitutions it was assumed that the people had an inalienable right to make and amend constitu-

tions and that no legal limits were necessary to restrict this power. The value of providing an orderly and legal method of amendment was recognized later, and practically all written constitutions at present contain an amending clause. The method of amendment is important in determining the degree to which the constitution keeps pace with changing conditions. If the constitution may be amended easily by a method that enables the political sovereign to express its will, there will be little discrepancy between actual conditions and legal organization. The chief danger will be that of instability, since the fundamental form of the state may be changed as the result of temporary waves of popular opinion. If the constitution is difficult to amend legally, or if amendment follows a process that does not enable the political sovereign to express its will, one of the following methods of change is likely. Either, as new needs arise, a large number of customs and practices, forming an unwritten part of the constitution and supported by public opinion, will develop or an extra-legal method of amendment, such as that of judicial expansion, will be used in place of the formal, legal process or there will be danger of revolution that will ignore legal procedure and redistribute sovereign powers in accord with the actual political conditions and needs.

Opinions differ as to the desirability of frequent and easy constitutional amendment. Conservatives, who reverence the past, view constitutions as sacred and oppose innovations. Radicals ridicule the veneration in which constitutions are held and are eager for new experiments. A sound political theory lies between these extremes. Modern opinion inclines to the following view :

1. The fundamental principles in accordance with which a state is organized, the powers of government are distributed, and the liberty of the individual is protected against governmental encroachment should be outlined in a written constitution which cannot be changed legally by the ordinary lawmaking process.

2. The legal method of amendment, while differing in procedure from ordinary lawmaking, should not be so compli-

cated or difficult as to prevent the organization of the state from corresponding to existing political conditions. The amending process should be neither so rigid as to prevent change nor so flexible as to encourage needless tampering with basic principles. Like the safety valve of an engine, the amending process should safeguard the governmental machine against too great speed and at the same time serve as an outlet against the danger of explosion.

The actual methods by which modern states legally amend their constitutions may be classified as follows :

1. By the ordinary lawmaking body and by the ordinary legislative procedure, as in Great Britain.
2. By the ordinary lawmaking body, but by special procedure or by unusual majority, as in France, where the two houses of parliament, meeting in joint assembly, after they have declared by separate resolutions in favor of amendment, act as the constitution-amending organ.
3. By special organs of government created for the purpose, such as a constitutional convention.
4. By the electorate in the form of popular referendum or of initiative and referendum. This method is favored by some who argue that it distinguishes between state and government, and recognizes that the people and not the government should create constitutional law. There is, however, the danger that the hands of the government may be tied by detailed constitutional provisions, and that material not properly constitutional will be incorporated into the written document.

In some cases several methods are combined. In the states of the American union, for example, amendments are sometimes prepared by constitutional conventions or by the legislatures and submitted to popular vote for ratification. In the national constitution of the United States, amendments may be proposed by two thirds of both houses of Congress, or, at the request of the legislatures of two thirds of the states, by a national convention called by Congress for that purpose ; and may be ratified by the legislatures in three fourths of the states or by conventions in three fourths of the states, Congress having the right to determine which method of ratification shall be followed. This makes the constitution of the United

States one of the most difficult to amend, and, because of the great inequality of population in the different states of the Union, enables a small minority of about one fortieth of the people to prevent an amendment desired by the remaining overwhelming majority.

In case a written constitution makes no provision for its amendment, it is usually held that the national lawmaking body, by ordinary procedure, may amend the constitution. In a few cases constitutions have forbidden the amendment of certain of their provisions. The constitution of the United States forbade any amendment prior to 1808 intended to interfere with the importation of slaves, and provides that no state, without its consent, can be deprived of its equal representation in the Senate. An amendment to the French constitution forbids the abolition of the republican form of government. Opinion differs as to the legal validity of such provisions. Some hold that they are legally binding and can be changed only by revolution; others hold that the amending clause supersedes them and that, like any other part of the constitution, they may be changed by the legal method provided for amendment. In any case such provisions are undesirable, since they attempt to fix certain principles unalterably. Jefferson's statement that each generation has the right to determine the form of government and the law under which it lives is a sounder theory of politics. On the other hand, if a constitution provides a method of amendment, that method alone is legal. Any other, no matter by how large a majority, would be a revolution. The state's will can be expressed only in the form of law; an illegal act is never the act of the state. In case of successful revolution a new sovereignty is created, and it may then determine the form of the constitution and the method by which it may thereafter be legally changed.

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CHAPTER XVI

THE ELECTORATE

OUTLINE

Requisites of Democracy
1. Civil liberty
2. Political liberty
    a. The extent of the electorate
    b. The powers of the electorate

Theories of the Nature of the Suffrage
1. The tribal theory
2. The feudal theory
3. The natural-rights theory
4. The legal theory
5. The ethical theory

Extent of the Electorate
1. Age
2. Sex
3. Citizenship
4. Residence
5. Property
6. Mental and moral qualifications

Control of Electorate over Government

Direct Governing Powers of Electorate
1. Initiative
2. Referendum
3. Plebiscite

Advantages and Disadvantages of Direct Legislation

Minority Representation

Requisites of Democracy. The strength and stability of modern states are usually attributed to the fact that they are democratic. It is argued that if the people make the laws that they obey, and select the persons to administer such laws, there is the largest likelihood that general welfare will be secured, and the least danger of dissatisfaction and revolution. A more careful analysis of the term "democracy" and of the methods by which a democratic government is organized is desirable.

Democracy is based upon the theory of equality and, from the political point of view, includes these two concepts :

1. *Civil liberty*, or the right of each person to equal freedom, within a certain sphere from interference on the part of other persons or of the government.

2. *Political liberty*, or the right to share in exercising the authority of the state.

Accordingly, a state is democratic when, from the standpoint of the former, all its citizens are guaranteed an equal amount of civil liberty, or as usually stated, are equal before the law ; and, from the standpoint of the latter, when a large proportion of its citizens take some part in the sovereign power of legally expressing the state's will. A state in which all are equally exempt from interference and all share equally in exercising such authority as exists would be a perfect democracy. Such a condition is in practice, impossible. The actual political authority exercised by the mass of citizens is determined by the following :

a. The extent of the electorate, that is, the proportion of the entire citizen body that are active citizens or the number that may, at any time or in any way, legally exercise governing powers.

b. The powers of the electorate. These powers may be exercised directly by the electorate as an organ of government, or indirectly by the control which the electorate legally exerts over the ordinary organs of government. Indirectly it may exert a certain control by the pressure of public opinion. If the electorate exercises only small powers and at irregular or infrequent intervals, real authority is in the hands of the ordinary government, and the extent of the electorate is only an apparent test of democracy. Only when the electorate directly exercises large powers, or where its control over the entire government is extensive and constant, is the electorate an important governmental factor.

Hence in a pure democracy the electorate would coincide with the entire citizen body and would directly exercise all governmental authority. But no state finds it expedient to widen its electorate beyond a fractional part of its entire population, and in no modern state could even this narrowed

electorate exercise all governing powers. The degree of democracy will depend, then, upon the limitations placed by a state upon its electorate, upon the direct part played by the electorate in government, and upon the relation existing between the electorate and the ordinary organs of government. Moreover, since unanimous consent among a large number of persons is unlikely, and some form of majority must prevail,[1] the question of dealing with the minority remains ; and states find it expedient to devise means of protecting this body and of giving it a legal method of expressing its will. Accordingly, the limitations placed by states upon the size of their electorates, the authority exercised by the electorate indirectly by means of their control over the ordinary organs of government, the means by which the electorate exercises political authority directly without the intermediate use of other governmental organs, and the methods of representing and protecting the minority will form the subdivisions of this chapter.

It should be noted that political democracy does not necessarily imply economic or social democracy. Even where political rights and powers are widespread and fairly equally distributed, there may exist wide discrepancies in the distribution of wealth, preventing economic equality, and clearly marked class distinctions, or castes, preventing social equality. Where such conditions exist political democracy finds difficulties in successful operation, since superiority or power of any kind tends to be translated into political control. Hence a democratic state finds it desirable to some extent to make efforts towards securing a fair degree of economic and social equality.

Theories of the Nature of the Suffrage. The functions of the electorate are exercised by the process of voting. Concerning this political right various theories have been held.[2]

1. *The tribal theory.* This theory appeared in the early tribal organization of the Greek, Roman, and Germanic

[1] J. G. Heinberg, "History of the Majority Principle", in *American Political Science Review*, February, 1926.

[2] W. J. Shepard. "The Theory of the Nature of the Suffrage," in Proceedings of the American Political Science Association, 1912.

peoples, and reached its highest development in the Greek city state. It regarded suffrage as a necessary attribute of membership in the state. State and individual were identified. Neither had any interests that conflicted with the other, and voting on questions of public policy was a part of the life of the community in which every citizen shared. Citizenship might be narrow and exclusive, but within the citizen class each person was expected to share in the work of government. The suffrage was not viewed as a right or a privilege, but as a necessary and natural part of the life of every citizen. Membership in the state carried with it the obligation to take active part in its life. The modern practice of requiring citizenship as a qualification for voting represents a survival of this theory.

2. *The feudal theory.* In the latter part of the Middle Ages, when the system of representation was being developed, the right to vote was considered as a vested privilege, attached to those occupying a particular status in society, and usually associated with the ownership of land. Modern property qualifications for voting are a survival of this theory, as are the systems of plural voting, such as that which existed until recently in Great Britain, where persons who owned estates in various parts of the country had the right to vote in each of these places.

3. *The natural-rights theory.* The theory of an original state of nature, in which all men were free and equal and possessed natural rights, and of the establishment of the state and of government by a voluntary contract, led to the doctrine of popular sovereignty. All political power came from the people. They alone could create law, and the government was their agent, receiving its delegated powers from the people who created it. In accordance with these principles the right to take part in government was a natural right, by means of which the general will of the people could be discovered and the government kept responsible to the consent of the governed. According to this theory, which reached its highest development in connection with the revolutions in England in the seventeenth century and the American and French revolutions in the eighteenth century, the right to vote was viewed as an abstract right which people possessed under the law of

nature. It was also appealed to in the efforts to extend the suffrage to women and to other disfranchised classes, and to widen the direct governing powers of the electorate by such devices as the initiative and referendum. The fallacy in this theory results from confusing the ethical and the legal concept of law and rights. Only those possess the right to vote, in the legal sense, upon whom the state has conferred such right by law. The state may legally and, from the point of view of political expediency, quite properly restrict the suffrage by imposing such qualifications as it considers necessary.

4. *The legal theory.* According to the legal theory, which is held by the majority of political scientists, the electorate is viewed as one of the organs of government, whose composition and powers are determined by the laws of the state. Voting thereby becomes a function of government, the exercise of a public trust. The question of who may vote and of what the voters may do is decided by each state from the point of view of political efficiency. Suffrage, therefore, is not a natural right, but a political right, conferred by law. This theory serves as the justification for various reform movements, such as proportional representation, the short ballot, corrupt-practices acts, and educational qualifications for voting, the purpose of which is to secure a competent and effective electorate as a part of the governmental organization.

5. *The ethical theory.* The exponents of the ethical theory argue the desirability of the right to vote, not as a natural right but as a means for the most complete development of human personality and worth. By taking active part in government the citizen becomes more interested in public questions and more intelligent concerning public policy than he otherwise would be. His capacity for self government is thereby increased, and his dignity and self-respect are enhanced by the opportunity for self-expression in political affairs. This theory has been used to justify the extension of the suffrage, as a means of political education, to classes not fully competent to exercise it wisely. The granting of suffrage to former slaves at the close of the American Civil War,[1] and the recent establish-

[1] Suffrage was entitled to the Negroes also on the basis of the natural-rights theory and as a matter of political expediency.

ment of wide powers of self-government in the Philippine Islands and in India, are examples of this policy.

It may be noted that the first, third, and fifth of these theories tend to widen the suffrage and equalize political rights. The second and fourth theories restrict the suffrage on the basis of particular privilege or ability. If the suffrage is viewed as a right or a privilege, the citizen is theoretically free to exercise it or not as he sees fit. If it is viewed as a legal obligation or duty, it may be argued that voting should be compulsory, in order that the real will of the electorate may be accurately represented. In practice, however, only a few states impose penalties for failure to vote. It is usually believed that better results are secured if the citizen is under moral obligation only to perform this political duty ; and that compulsory voting tends to lower the character of the privilege, to create a feeling of resentment against the government, and to increase the danger of political corruption.

Extent of the Electorate. The widening of the electorate is one of the most characteristic features of recent political development. States have always made a distinction between citizens and noncitizens, based mainly in ancient times on common blood and worship, in the Middle Ages on personal allegiance to the ruler, and more recently on territorial sovereignty. Within this class of citizens, all of whom owe allegiance to the state and may claim its protection, a further division has been made into those who have not, and those who have, the right to share in expressing the state's will. This latter class has usually been limited to a comparatively small part of the total citizen body. In the city states of Greece and in the Roman Republic a fair proportion of the population had, under certain restrictions, a share in governmental authority. However, Rome's expansion and the establishment of the Empire destroyed this early democratic progress. The modern electorate developed from the local moots and assemblies of the Teutonic peoples and from the system of representation which created parliaments in several of the new national states that appeared toward the end of the medieval period. The commercial centers of Italy and Germany also revived some of the methods of the early city states in using the

elective method for selecting officials of government. In England a national electorate came into existence in the thirteenth century in connection with the selection of delegates to advise the king and his council on matters of taxation. The right to vote was limited by property qualifications in the rural districts and was restricted to members of the monopolistic corporations in the boroughs. The religious disputes following the Reformation added religious qualifications for voting in many states. As late as the beginning of the nineteenth century only 3 per cent of the population of England possessed the right to vote.

The doctrines of natural rights, equality of men, and popular sovereignty, which were prevalent in the philosophic theories of the eighteenth century, manifested themselves in a demand for universal manhood suffrage ; and in the French Revolution these doctrines were put into practice. In the United States, where English political methods had been established without the background of feudal institutions, a comparatively extensive suffrage was further widened, as a result of these theories, by abolishing religious and property qualifications. Even in England the injustice resulting from the restricted and unevenly distributed franchise led to the Reform Acts of the nineteenth century, by which the suffrage was extended to the farm laborers and the city workers. Other states, affected by the general democratic tendency of the last century, have established a more or less extended electorate ; and agitation for wider and more equal suffrage still exists At present, in the more liberal states, almost half the entire population are voters. Remaining limitations, some being survivals of earlier restrictions, others being the result of political expediency, may be summarized as follows :

1. *Age*. All states agree that a certain maturity is a requisite to the political intelligence and judgment needed in voting. Hence a minimum age limit to the exercise of the suffrage is universal, the usual requirement being twenty to twenty-five years of age. This qualification alone removes from the electorate almost half the entire population.

2. *Sex*. Political authority in its origin was closely connected with military power, and in many early political societies

the freemen in arms formed the electorate. This association of political power with military service excluded women from active participation. When modern states arose, women were legally and economically dependent; and while in some states, through descent, women might occupy the throne, the idea that women as a class should share with men in government did not exist. In fact, except for the philosophical theory of "universal suffrage," held by a small minority of extreme radicals at the time of the French Revolution, it was not until the latter half of the nineteenth century that woman's suffrage was seriously urged. Even today, in many countries it has made little progress. Before the First World War, women had secured the right to vote in some of the American states, in Australia, and in Finland, and had the right to vote in local elections in Great Britain, New Zealand, and Denmark. Organized movements for the enfranchisement of women were actively at work in many countries. The important part played by women during the war gave an impetus to their demand for political rights and led to a general extension of women's suffrage. By constitutional amendment women were given equal political rights with men in the United States. In England women were given the right to vote in parliamentary elections. After the First World War the new constitutions of Russia, Germany, Poland, Austria, Czechoslovakia, Rumania, the Irish Free State, and, more recently, Italy and France conferred upon women full or partial rights of suffrage. In many of these countries the enfranchisement of women was followed by their election to public office.

The opponents of woman's suffrage argued that women were physically unable to perform all the duties and obligations of citizenship, especially military service, and that hence they had no right to demand its privileges. It was held that active participation in public affairs would unsex women and destroy their valuable qualities and services as mothers and homemakers. If a wife voted differently from her husband, it would tend to create dissension in the family; if she voted according to her husband's advice, her vote was merely a duplication of his. The authority of Scripture was used to show that women were intended by God for a position of obedience, rather than

of authority. In Catholic states woman's suffrage was opposed because of the fear that the opinions of women would be controlled by the priests. Many argued that women would be guided by sentiment and emotion rather than by reason and that they would take little interest in public affairs after the first novelty wore off. It was believed that women's best influence could be exerted indirectly and nonpolitically, and that public careers for women would destroy deference and chivalry toward the sex, would make them different creatures, and would be bad for the state.

The arguments in favor of equal rights for women took various forms. It was pointed out that the proper criterion for determining the right to vote was moral and intellectual, not physical, and that women should logically be given equal civil and political rights with men. With the entrance of women into industry it was argued that they needed the right to vote to protect themselves against class legislation and to secure proper regulations concerning hours, wages, and conditions of employment. Some believed that the active participation of women in political affairs would have a purifying and elevating influence and insure better government. The doctrine of "no taxation without representation" was also used by many women who were owners of property. Universal education and the growing economic independence of women did much to break down opposition to the movement for woman's suffrage.

3. *Citizenship.* At the present time, when movement of population from one country to another is common, citizenship becomes an important and complicated problem. Most states require either original or naturalized citizenship as a qualification for suffrage. Citizenship at birth is decided by one of two principles or by a combination of both. n accordance with the principle of *jus sanguinis*, the nationality of a child follows that of his parents or one of them, regardless of the place of birth. In accordance with principle of *jus soli*, nationality is determined by the place of birth, regardless of the citizenship of the parents. The former principle is the older and was incorporated into Roman law. The latter principle appeared in connection with the feudal theory of territorial sovereignty. Conflicts resulting from these two theories of

citizenship are usually decided by treaty agreements among states, or by the practice of states in declining to assert their claims as long as the citizen whose status is in dispute remains outside their territory, or by allowing persons of double nationality to choose the one they prefer. The principle of *jus soli* has an advantage in the fact that citizenship is easily proved, but in other respects it is illogical and unsatisfactory. The principle of *jus sanguinis* lacks the advantage of easy proof, but is in general more natural and reasonable and has been more widely adopted.

Modern states differ widely in their attitude toward admitting aliens to citizenship by formal grant or naturalization. Citizenship conferred by this process is a gratuitous concession on the part of the state, and may be granted on prescribed conditions or may be withheld for any reason which the state considers expedient. In some cases the process is made easy, and resident aliens are encouraged to become citizens; in others the process is so difficult as to discourage the admission of new citizens. In the United States only white persons and persons of African descent are eligible to naturalization. Naturalized citizenship does not necessarily carry with it the right to vote. Citizenship and suffrage are by no means coextensive. Many citizens are excluded from the suffrage in all states; and states may, if they choose, confer the right to vote upon resident aliens.

4. *Residence*. Closely connected with citizenship is the requirement that in order to vote a person must establish a legal residence in a particular place for a certain period of time. In the United States, where population is especially mobile, a period of residence ranging from thirty days in some election districts to two years in some commonwealths is demanded; and a person may vote only in the district containing his residence. In Great Britain a person possessing certain property qualifications may vote in one district in addition to that in which he resides. Some form of registration to prevent fraud in voting is in practice in all states.

5. *Property*. Since modern suffrage originated during the feudal period, its exercise was for a long time limited to pro-

perty holders. An early English statute required a freehold worth forty shillings a year as a requisite for voting, and for centuries the possession of real estate or the payment of taxes was necessary. According to the current theory, voting was the accompanying right of property, not of citizenship, since property-owners alone had a permanent share and interest in the community. Even in modern times it has been urged that the assembly which imposes taxes should be elected by those who pay something toward the taxes imposed. While this theory has largely disappeared, certain of its elements survive. A small poll tax remains as a qualification for voting in many states, and in some the possession of property gives to its owners additional votes or special privileges in government. While paupers, dependent on the state, are usually excluded from the electorate, property qualifications in general are being abandoned. According to the theory in present-day Russia, possession of property becomes a distinct disqualification for participation in government.

6. *Mental and moral qualifications.* Religious qualifications for voting have practically disappeared, although the constitutions of several commonwealths in the United States provide that no person shall vote who does not believe in a God. Criminals in confinement and idiots and lunatics are usually excluded ; and sometimes those who have been convicted of certain crimes, such as bribery in elections, are temporarily or permanently disqualified. Recently educational tests, involving ability to read and write, have been adopted in a number of states. This requisite is based on the sound principle of political expediency that voting should be intelligent. The difficulty lies in the lack of a practical method of determining intelligence on public questions. Ability to read and write does not necessarily imply intelligent knowledge of public questions or high standards of honesty and integrity. Persons of high attainments in certain fields of knowledge may be absolutely ignorant and indifferent concerning political matters. Sometimes illiterate persons may possess sound sense and judgment on governmental questions. Where propaganda is used through the press deliberately to misinform the voters, ability to read may even be an obstacle to the forming of

sound opinions. In some cases, as in the Southern states or the United States and in British South Africa, educational tests are administered mainly for the purpose of disfranchising the black population.

In addition, there are exceptional qualifications in certain states. The residents of the District of Columbia are entirely disfranchised. In Russia those who employ others for the sake of profit or who live on income not derived from their own labor, monks and priests of all religious denominations, and members of the former ruling dynasty and of the former secret police were excluded from voting. Soldiers and sailors on actual military duty are disfranchised in some states. Qualifications for the suffrage are sometimes applied to the entire state by the constitution, as in the German Republic, or by a single law, as in France. In England the suffrage has been established by a series of laws each of which extended the suffrage and partially repealed previous statutes. Of these the Reform Acts of 1832 and 1867 and the Representation of the People Acts of 1884 and 1918 were the most important. In the United States, except for the Fifteenth Amendment, providing that the right of citizens to vote shall not be denied on account of "race, color, or previous condition of servitude," and the Nineteenth Amendment, extending full and equal suffrage rights to women, qualifications of suffrage are left to the separate commonwealths, the Constitution providing that for federal suffrage the voters "in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature." In practice the full strength of the electorate is never actually exercised in any country, sickness, absence from home, and deliberate or thoughtless failure to vote reducing the total. In elections in which there is little general interest the vote cast is often but a small part of the total number of eligible voters.

Control of Electorate over Government. Modern states differ in the degree of control which the electorate exercises over the ordinary officials of government.[1] If the constitution

[1] W. Weyl, *The New Democracy*, Chap. XVIII.

may be modified only after reference to popular vote, the electors determine the form of government, and by the insertion of a Bill of Rights in the constitution may exercise a negative control by excluding the ordinary government from a certain field of powers. The real authority of the electorate will be determined largely by the method in which the ordinary officials of government are chosen and by the control which the electorate exercises over them, either in influencing or in checking their actions.

As soon as the area and population of a state exceed a comparatively small limit, it becomes increasingly difficult for the electorate to exercise direct political power. Popular assemblies either are attended by only a minority of those qualified or become too unwieldy for actual usefulness, incapable of serious deliberation or of dealing with complicated problems. Modern democracies have met this difficulty by selecting smaller groups, representative of the whole, to create law and by choosing officials to administer it. Representation and election are thus two means by which the electorate keeps in touch with the other organs of government. These bonds are further strengthened by the principle of local self-government, according to which certain affairs are left in the hands of the smaller units, so that in those areas a more intimate connection between electorate and government obtains than would be possible in the state as a whole.

The control of the electorate over lawmaking representatives and public officials is narrowed in many states by the fact that heredity, appointment, and indirect election remove part of the government from its influence. Besides, in many lawmaking bodies the representatives, once chosen, are permitted to exercise their own judgment on questions at issue and are under no legal compulsion to express the wishes of their constituents. Of course, in all elective offices the length of term affects the power of the electorate. Frequent elections allow opportunity to indicate approval or disapproval of certain lines of policy, and desire for reelection leads many representatives to follow the wishes of those on whom that reelection depends. In some cases the electorate may remove as well as select officials, by means of the recall, in which a certain number of

voters, by petition, may demand a popular vote as to whether or not a certain elected official shall remain in office.

The system of indirect election, by which the electorate chooses a smaller body, which in turn selects officials of government, was popular in the early period of modern democracy. It was upheld on the ground that the ultimate choice would rest in a body possessing a high average of ability and intelligence, and that the evils of party passion and of hasty popular emotion would be avoided. Against this system may be urged the fact that voters lose interest if a middleman is interposed between them and the objects of their choice. Besides, the danger of political corruption may be increased if the electoral body is narrowed to a small group, more easily reached by special interests. Where the party system is well developed, indirect election is likely to degenerate into a cumbrous formality, since the electors will be pledged to vote for the party candidates. This has taken place in the method of choosing the president and vice president in the United States. The system of indirect election is not in harmony with the spirit of modern democracy and has been largely abandoned in the new governments of modern states.

The actual power of the electorate also depends to some extent on the method by which voting is exercised. It is generally believed that secret voting enables the voter to exercise his choice freely and independently, without the bringing of pressure to bear upon him by the government in power or by those who are in a position to intimidate him in any way. At the same time there are those who believe that voting, as a public responsibility, should be exercised publicly, and that secret voting develops a feeling of irresponsibility. Easy facilities of voting also increase the actual power of the electorate. If elections are held on working days and the workers lose financially if they take the time to vote, the actual number of votes cast will be reduced and the influence of the working classes will be reduced. The practice of holding elections on Sunday became general throughout Europe, If the voting district is large, requiring many voters to travel long distances, many voters will find it difficult to exercise

their suffrage. Provision has been made in some states for a system of absent voting, enabling those who are away from home on election day to forward their ballots by mail. Under the conditions of modern life anything which increases the ease and convenience of voting increases the actual power of the electorate and prevents the disfranchisement of those whose business, health, or amusements would otherwise interfere.

In addition to the pressure of public opinion, which by means of public meetings, petitions, the press, and the lobby, may be brought to bear on governmental officials, the electorate in modern states exerts a powerful influence by means of political parties. These voluntary associations of voters, aiming to control all the organs of government and establishing behind the government a machinery of nominations, conventions, and committees, determine the real policy of the state and give to the electorate a most effective way of making the government constantly and promptly responsive to its will. On the other hand, if party machinery falls under the control of a few men, the electorate finds itself less powerful than ever, for the legal irresponsibility of party bosses makes them correspondingly difficult to attack or remove. As political parties become a legal part of the government and are made responsible to the wishes of the electorate, the authority of the latter over government will increase. The system of direct primaries was adopted in an effort to democratize political parties and extend the control of the voters over nominations as well as elections.

Direct Governing Powers of Electorate. In addition to the influence indirectly exercised by the electorate in its control over the ordinary government, a direct share in governing is possessed by the electorate in some states. Not only does the electorate, by means of jury service, exercise direct judicial powers in many states, but it also takes part in the actual creation of law. Direct legislation by the assembled voters has survived in the Swiss cantons, partly because of the small size of the units, partly because of the influence of Rousseau, who taught that direct democracy alone embodied true popular sovereignty. The surviving town meetings in New England represent similar conditions and beliefs.

In some states direct legislation has been recently adopted in an effort to extend democracy and to remedy some of the evils of representative bodies. Modern methods of communication have removed some of the hindrances to direct democracy in large areas; and government by the mass of the people has been revived. This takes the following forms:

1. *The initiative*, by which a given number of voters may, by petition, originate a law. In its direct form the proposed measure is submitted to the voters for their decision. In its indirect form the proposed measure is submitted to the legislature for its action, followed sametimes, in case of unfavorable action by the legislature, by submission of the question to the voters. The purpose of the initiative is to enable the electorate to secure the passage of laws desired by the majority, regardless of the wishes of the legislature.

2. *The referendum*, by which a proposed law or constitutional amendment is submitted to popular vote and becomes law if ratified by the required majority. This may be compulsory for certain kinds of laws, or may be optional at the discretion of the legislature or if demanded by the petition of a certain number of voters.

3. *The plebiscite*, by which a certain question is submitted to popular vote, the decision having sometimes no legal force, but being intended as an expression of public opinion and as a guide to the policy of the government.

Although constitutions were first adopted by popular vote in the American states and in France, direct legislation by the electorate has been most highly developed in Switzerland. Several of the cantons forming the Swiss federation retain the ancient folkmoot, or *Landesgemeinde*, in which all the voters meet, pass laws, vote taxes, and elect officials. In the Swiss federal government the referendum is compulsory for all constitutional amendments, and optional, at the request of thirty thousand voters of the legislatures of eight cantons, for laws of general application. Fifty thousand voters may demand either a specific or a general revision of the federal constitution; but there is no federal initiative for ordinary laws, unless they be put in the form of a constitutional amendment.

In all the cantons there are compulsory referendums for constitutional changes ; and in all except conservative Freiburg and those having the *Landesgemeinde*, the referendum for ordinary laws of a general nature is either compulsory or optional, the number of voters required to demand a referendum in the latter case depending upon the population of the canton. The initiative may be used in all but one of the cantons for constitutional revision, and in all but three to enact or revise ordinary legislation. In actual practice the referendum is used much more than the initiative, and a large proportion of proposed laws are rejected. In 1921 an amendment to the constitution was adopted which provides that international treaties, concluded for an indeterminate period or for more than fifteen years, shall be submitted to popular vote for adoption or rejection if the demand is made by thirty thousand voters or by eight cantons. This is a unique extension of the principle of direct legislation. Many of the new constitutions drawn up by European states after the First World War contained liberal provisions for the use of the initiative and referendum.

In the United States the electorate exercises direct legislation in the New England town meetings, where the voters in mass meeting elect town officials, vote taxes, and decide questions of local concern. Almost from the beginning of our history popular votes have been taken on the adoption and amendment of state constitutions. No national referendum exists in the United States, but in the states a number of questions are referred to popular vote. The legislatures in some cases may, and in others must, submit certain measures to popular referendum, and in some states a certain percentage of the voters may demand a referendum on action taken by the legislatures. The initiative is used in some of the states, although petition to the legislatures is also used to request action on matters of interest to the voters. Recent city charters in the United States make wide provision for the use of initiative and referendum.

Advantages and Disadvantages of Direct Legislation. Among the advantages claimed for direct popular legislation are those shown on the following page :

1. The voters may force action on apathetic legislatures or may prevent legislation that does not reflect the wishes of the majority.

2. The voters are less likely than the legislature to be improperly influenced or to hesitate to oppose special interests.

3. Public sentiment is awakened and interest in government stimulated if voters have questions of importance to consider.

4. The local referendum may adapt general law to the needs of particular communities by means of local option.

Among the disadvantages are these :

1. Voters take little interest in such elections. Because of their frequency and because a large proportion of citizens are not interested in many questions submitted, the number of votes cast is usually small.

2. The referendum destroys the sense of responsibility of legislatures. Unwise laws are passed in the expectation that popular vote will destroy them, and the advantages of having law framed by a group of men specially selected and trained is largely lost.

3. It is difficult to frame complicated statutes concerning economic or social questions in such a way that a simple Yes or No vote will indicate the real will of the people.

4. Laws prepared by initiative petitions are often so carelessly drawn that extensive litigation results.

5. Constitutional amendment by initiative and referendum leads to the inclusion in the constitution of much material that should be left in statute form.

6. Voters cannot inform themselves on many of the questions submitted and therefore vote unintelligently.

Because of the wide powers, direct and indirect, exercised by the voters in modern states, the electorate has become practically a separate and important department of government. Standing behind the ordinary executive, legislative, and judicial organs, it exercises political powers, varying in different states but tending to become more extensive as the intelligence and political ability of the people increase. It exercises executive powers in electing or recalling officers of administration ; it shares in legislative powers by electing representatives and by the initiative and referendum ; it takes

part in judicial decisions by means of jury service. In some states it has a deciding voice in the formulation of the constitution, thus determining the fundamental organization of the state. It is exercising a more direct and legal control over political parties, hitherto the chief bond between people and government. At the same time, restrictions on the extent of the electorate, once numerous, are being removed, this process making it coincide more and more with the politically capable population of the state. Also the growing size and powers of the electorate have brought into prominence certain defects of democracy in incompetence, extravagance, instability, and lack of interest, and this revelation has led in recent years to a reaction in favor of the greater efficiency to be secured by trained experts, chosen by civil-service tests or by appointment, and by a shorter ballot, concentrating the attention of the voters on the important and conspicuous offices only. In the opinion of many the devices of direct democracy, such as the direct primary and the initiative, referendum, and recall, have not worked as well as was expected, from the point of view either of increasing the intelligence and interest of the voters or of improving the efficiency of government.

Minority Representation. In a direct democracy it is conceivable that the wishes of a minority, consisting of almost half the entire electorate, might be completely disregarded. To prevent this possible tyranny of the majority, a number of devices are in use, granting to minorities more or less share in authority.

The systems of federal government and of local self-government are favorable to minorities in that they allow local communities to adjust government to their own needs, and avoid the possible dissatisfaction that uniform legislation over the entire area of the state would create. Besides, in dividing a state into districts and subdistricts, with officials and representatives chosen separately by each, the chance that the minority will control some places is much greater than would be the case if all officials were chosen on a general ticket. In all states national legislatures are elected by districts, based usually on the principle of representing approximately equal

numbers of population. By the process known as gerrymandering the authority having the right to redistribute these districts often arranges them in such a way as to make it difficult for the minority to control any of them ; or, by combining the minority votes in a few districts, gives them fewer representatives than their strength really deserves. Because of unequal growth of population frequent changes in the distribution of districts are necessary if, as is usually the case, population is the basis of representation.

Within the districts, even when honestly and equally established, there are always minorities whose votes, cast for defeated candidates, are lost ; and various schemes of minority representation have been proposed and in some cases put into practice. Sometimes it is provided by law that certain boards or commissions shall not contain more than a certain number of members of one political party, thus guaranteeing minority representation. In districts where more than one candidate is to be elected, the plan of limited voting, by which each voter is allowed fewer votes than there are places to be filled, results, unless the majority party is strong enough to divide its votes and still win, in the election of some minority members. From 1867 to 1885 this plan was tried in England, voters in places sending more than two members to Parliament being each allowed one vote less than the number of members to be chosen. In cumulative voting each voter has as many votes as there are candidates to be elected, and may distribute them as he likes. In this way a minority, if it concentrates its votes on one candidate, has a good chance to secure his election. This method is in use in Illinois, where three members are chosen to the lower house of the legislature from each district, and results in giving the minority about one third of the members.

Many political reformers have favored some form of proportional representation. According to this plan large electoral districts are used, each providing several representatives, and the system of voting is so arranged that the representatives will be allotted to the different parties in proportion to the number of votes cast by that party. Two main systems of proportional representation are in the use. English opinion

favors the method of the single transferable vote known as the Hare system.[1] According to this plan each voter has a single vote, but may indicate his preference among the candidates by stating his first choice, second choice, and so on. The quota, or number of votes required for election, is then ascertained by one of two methods : the number of votes cast is divided by the number of representatives to be elected, or, in order to make the result more accurate, by one more than the number of representatives.[2] In counting the votes, a candidate who receives sufficient first-choice votes to fill his quota is declared elected. His surplus votes, if any, are passed on to candidates not yet elected, in the order expressed in the preferences. If any candidate is elected by the votes he receives as second choice, his surplus votes are given to the third choice, and so on until the full number of seats are filled. Obviously, there is a considerable amount of chance in the order in which the ballots are counted, and various devices have been suggested to secure greater accuracy. Continental opinion favors the list system, under which the voter votes for the party list and also expresses his preference among the candidates upon the list. Each party secures representation in proportion to the votes cast for its list, and the members apportioned to each party go to the candidates in the order in which they appear on the list prepared by the party unless the voters express a different preference. Proportional representation is in use in the Irish Free State, in the Scandinavian countries, in Belgium, the Netherlands, and Switzerland, and exists in many of the small new states of central Europe. It is also employed in municipal elections in some cities in Canada and the United States. Proportional voting represents more accurately the real wishes of the voters than the system of majority or plurality voting in single-member districts, but in countries where there are many political parties it often results in legislatures containing so many party groups that action is impeded and responsibility dissipated.

In Prussia a form of minority representation aiming to guard the interests of the upper classes was formerly in use. Voters

[1] Formulated by Thomas Hare in 1859.
[2] Known as the Droop quota.

were divided into three classes, not numerically, but according to wealth, each class representing one third of the taxable property of the district ; and each class elected one third of the representatives or officials to which the district was entitled. A comparatively small number of wealthy men composed the first class ; a somewhat larger number of well-to-do, the second ; and the great majority of citizens, the third. Hence a very small number elected one third of the officials, and a minority usually controlled two thirds. In Belgium a somewhat similar system was is use until 1913, citizens having certain qualifications as to age, property, education, etc. being given either one or two additional votes.

In England and America plurality is usually sufficient for election. Since in these countries there are usually but two leading candidates, this convenient method works little hardship, although when there are more than two candidates the one elected may receive considerably less than a majority of the votes cast. In Europe, where party groups are numerous, absolute majority is often required. In some countries, if no one receives a majority on the first ballot, a new election is held at which a plurality is sufficient to elect. This encourages numerous groups to show their strength on the first ballot, hoping to win concessions from the leading candidates on the second. In other countries, if no candidate receives a majority, a new election decides between the two candidates that received the highest number of votes at the first election.

The peculiar arithmetical system by which presidential electors are distributed in the United States (each commonwealth being entitled to as many as it has senators and representatives in Congress, thus giving an advantage to the small commonwealths because of equal representation in the Senate), and the custom of voting for presidential electors on a general ticket (so that, no matter how small the majority, the entire electoral vote of a commonwealth is cast for the candidate of the party that wins the election), make it possible for a president to be elected who receives a minority of the total popular vote.

A modified form of minority representation was found in the attempt, formerly common, to represent separately the

important classes, professions, or interests in the state. In the Middle Ages the three estates—clergy, nobility, and commons—received distinct representation, and the constitutions of upper houses in some European states still show survivals of class distinctions. Landowners, churchmen, large taxpayers, representatives of army and navy, and men distinguished in science and art are found in upper houses, and are chosen for the purpose of representing interests or classes rather than population or territorial divisions. In the United States the legal profession has wielded an influence in politics out of all proportion to its numerical strength. In recent years various theories of representation of economic interests or of occupational groups have been ardently supported, and this principle was incorporated to some extent in the Soviet system of Russia and in the syndicates in Fascist Italy. It underlies in general the new theories of communism, of syndicalism, and of guild socialism.[1]

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[1] See below, Chap. XXII, pp. 410 ff.

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CHAPTER XVII

PUBLIC OPINION AND POLITICAL PARTIES

OUTLINE

Nature of Public Opinion. During the greater part of human history government was viewed as something exalted and mysterious, beyond the comprehension of the masses. The authority of rulers was believed to be of divine origin, and the people were expected to give reverence and obedience,— not to question or criticize the acts of those in authority With the spread of democracy, government came to be viewed as a means by which the best interests of the people could be served, and the officials of government as public servants selected to express and carry out the popular will. This change in attitude toward government has been owing largely to the growth and power of public opinion and to the development of methods of giving it effective expression. Among the factors contributing to this growth have been the increased intelligence of the people resulting from public education; the widening of the electorate, enabling the people to take active part in government; and the development of means of communication and of devices to keep the public informed and interested.

What is generally called public opinion has been criticized on the ground that it is neither *public* nor *opinion*. Prevailing opinions are often those of a small minority or of an interested class or of a few outstanding leaders. The masses are often indifferent or ignorant or misinformed. In this sense public

opinion may not really be public. Besides, there may be wide differences of opinion on controversial questions, sometimes with a distinct cleavage between two opposite views, sometimes with many attitudes shading off one into another. In such cases it is difficult to find a general consensus that can be called public opinion. Public opinion is usually a more or less confused mass of public opinions. Much of what is called public opinion is not really *opinion*. An opinion presupposes extensive and accurate knowledge on the question under consideration and a reasoned judgment or conclusion reached by deliberate thought. Many so-called opinions are rather prejudices or beliefs or hasty conclusions or traditional dogmas. Few persons have the knowledge or the willingness to do the difficult thinking necessary to form opinions. Most persons accept ideas created by others and believe them to be their own. Public opinion is usually formed by a small group of leaders, and individuals accept their arguments or suggestions, as they have neither the knowledge nor the time nor the interest to enable them to form opinions of their own. The soundness of public opinion depends to a large extent upon the wisdom and unselfishness of political leaders. Effective public opinion for the purpose of government is almost always opinion which is organized and which represents special knowledge concerning the question at issue. Besides, the intensity of an opinion is often of more importance than the number of persons who accept it. An organized and vociferous minority often gives the impression that its opinions are the opinions of the majority.

In order that public opinion may be sound and effective several conditions are necessary. The population should be intelligent and constantly alert in public affairs. It should also be homogeneous and possess a community of interests. Wide differences in race, religion, or class interests interfere with the formation of a general consensus of opinion on public questions. If the political mind of a people is to be sound, there must be, behind minor differences, an essential agreement on the nature of the government to be maintained and the national ideals to be realized. The means of informing and influencing public opinion should be extensive and honest

and should not be used to deceive the public or to further the interests of any selfish group. Freedom of opinion and of discussion is necessary. Minority groups must have the right to urge their views by peaceable means. Sound opinions can be formed only if all points of view can be freely expressed and allowed to compete for supremacy. Finally, the will of the majority, when clearly and fairly expressed, must be accepted by the minority until such time as its opinions prevail. Popular government has failed in some countries because of the unwillingness of minorities to acquiesce in majority rule. With the growing complexity of modern life and with the expanding powers of government, the amount of information needed and of effort required to create intelligent public opinion is constantly increasing. The success of democratic government depends upon the degree to which public opinion is sound, well developed, and effective in controlling the actions and policies of government. The alternative is some form of dictatorship, which may be efficient, but which is dangerous because it destroys freedom and self-government.

Methods of Influencing Public Opinion. Because of the importance of public opinion in modern democratic states, much attention, involving extensive organization and the expenditure of vast sums, is directed to various forms of propaganda intended to form and direct the political ideas of the people. In part this is an honest attempt to educate and enlighten the people and to arouse their interest in furthering needed reforms or in opposing dangerous proposals. In part it is the deliberate attempt of certain groups or interests to secure popular support for policies to their selfish advantage. Much attention in recent years has been directed to the psychological study of group opinion and to methods of influencing the public mind, both in business and in politics. Democracy and propaganda have developed side by side.

One of the most important agencies in the formation of public opinion is the press, particularly the newspapers and, to a less extent, magazines and books. The newspaper, through its news and editorial columns, presents facts, interpretation of facts, and statements of opinion. If facts are presented accura-

tely and impartially, the newspaper performs invaluable service in keeping citizens informed on the problems of the day. Formerly the editorial opinions of the press carried great weight, and editors in whom the public had confidence exercised widespread influence on public opinion. At present readers are inclined to discount the editorial attitude of the press and to pay more attention to the news items, forming their own opinions on the basis of the information thus conveyed. Accordingly, public opinion is affected by the type of news published and by the color given to the news by the way in which it is presented. The omission of certain types of news and the failure to present the facts fairly are accusations frequently brought against the press. Loss of confidence in its impartiality and accuracy is caused partly by the fact that newspapers or chains of papers are owned by interests which use them to further certain attitudes and opinions, and partly by the belief that the press omits or distorts news that might be objectionable to its advertisers, on whom it depends in large measure for financial support. Since much of the news from all parts of the world is furnished by news bureaus, the control of such agencies is important, inasmuch as they may distort or suppress information and thus mislead public opinion.

What is done by the press through the printed word is supplemented today by the spoken word by means of the new devices of the radio and the talking picture. The events of the day and the opinions of its leaders are brought to the attention of millions, many of whom read little and could not otherwise be reached. The speeches of public men, which formerly reached only a limited audience, are now broadcast and are listened to by immense numbers. The effects of these inventions on modern democracy may prove epoch-making, as their power for public education or for public deception is almost unlimited. Posters, placards, and billboards also appeal to many who do not read newspapers or books.

Political parties carry on extensive campaigns of propaganda for the purpose of directing public opinion in favor of their interests. In addition to the use of newspapers and magazines favorable to their point of view, they prepare party platforms, campaign textbooks, and a flood of documents, pamphlets,

posters, and other forms of prepared opinions. In many cases the voter reads only the material furnished by his own party and thus is strengthened in his traditional allegiance. In addition to the political parties there are many associations that carry on campaigns of education or propaganda for the purpose of influencing public opinion and securing the adoption of certain governmental policies. In the United States such organizations as the American Federation of Labor, the Congress of Industrial Organizations Political Action Committee, the National Association of Manufacturers, the National Educational Association, the American Legion, and the Grange have been active in influencing public opinion for or against certain measures. Groups representing the interests of various types of business, of labor, and of the farmers hold different opinions on the relation of government to economic questions, and use various methods in spreading their ideas or in bringing pressure to bear upon the voters. Reform movements have usually been started by organized groups, such as those that were formed to further the abolition of slavery, equal rights for woman, civil-service reform, and the prevention of child labor. In many cases rival organizations compete for public favor. Some groups believe it is necessary to be prepared for war and favor a vigorous foreign policy ; others cling to isolationist doctrines and support pacifist ideas.

Considerable effort is made to inform public opinion by public and private agencies that are not concerned directly with furthering any particular interest or point of view. In this class would fall a large part of the documents, reports, and statistical material published by national and local governments, by bureaus of municipal research, and by various endowed foundations. The medical and bar associations also make efforts to inform public opinion concerning their special fields. Much influence is also exerted by churches, chambers of commerce, and men's and women's forums and clubs.

In time of war, propaganda is now organized on an immense scale for the purpose of unifying public opinion at home, strengthening the morale of the troops and of the population behind them, dividing the public opinion or breaking down the morale of the enemy, and creating favorable opinion in

neutral countries. War aims are stated in such terms as will appeal to popular beliefs and emotions, the enemy is accused of aggressive war guilt or of inhuman atrocities, and favorable news is exaggerated and unfavorable news minimized. Every method to arouse hate and enthusiasm is utilized, and all opinions which differ or oppose are ruthlessly crushed. The growth of modern democracy has made public opinion important in the field of international relations as well as in internal politics.

Nature of Political Parties. A political party consists of a group of citizens, more or less organized, who act as a political unit and who, by the use of their voting power, aim toc ontrol the government and carry out their general policies. It is the most elaborate and comprehensive form in which public opinion is organized and made effective in government. A group interested in a particular reform or a single piece of legislation does not form a true political party. While a party may be divided on some issues or contain factions within its organization, it is united by certain general policies and by the desire to control all the organs of government. Parties are held together by family traditions, by business and social connections, and by self-interest. Emotion as well as intellectual conviction has much to do with the creation and the vitality of parties. The mere love of combat and the desire for victory are powerful factors in party contests. To some extent party lines are formed according to psychological temperament, a natural division being between liberals and conservatives, the former being divided into radicals and moderate liberals, the latter into moderate conservatives and reactionaries. When in power, however, conservatives tend to become liberal in order to secure popular support, and liberals tend to become conservative, because sobered by responsibility.

Behind these apparent differences in temperament usually lie economic interests. Men of property are inclined to caution, dreading change because it threatens their security. Those who have no possessions welcome change because of the hope that it may improve their condition. The former group will welcome government action to protect or further their interests, such as tariffs or a vigorous foreign policy, but will oppose

governmental regulations that interfere with their profits. The latter group will welcome labor legislation and the use of public funds to further the social welfare of the masses, and will favor laws to restrict monopolies. In some countries national and religious issues divide parties. Questions of constitutional theory and social and economic issues are usually involved. While parties arose, and still exist to a considerable extent, outside the legal organization of the state, they form an important part of the actual machinery of government.

When the functions performed by political parties and the reasons for their existence are analyzed, the close connection between political parties and democracy is evident. In despotisms, where the people have no legal voice in government, they can express disapproval or desire for changes only by assassination or violent rebellion. By such methods an obnoxious ruler may be removed, but through them there is little hope of establishing permanently a more tolerable form of government or of substituting a consciously formed general will for the arbitrary rule of those in power. Gradually, however, the voluntary association of subjects to resist tyrannical rulers developed democracy. Large bodies of men became accustomed to forming and executing common purposes, the electorate was widened, and the principles of election and representation in selecting governing officials were introduced. In the democracies thus established some form of organization was necessary in order that the people might continue to formulate and execute their will ; and the voluntary associations through whose efforts democracy was secured were perpetuated in political parties, by means of which democracy is workable. Rival political parties are found only in democracies ; political parties, of some degree of organization and influence, always exist in democracies. In the Greek cities and in the Roman Republic factions, or parties, controlled the government ; in the free cities of the Middle Ages similar grouping arose ; and in all modern democratic states parties exist in the form of associations, behind the government, into which the people are organized.

In democracies political parties arise, or new groupings are formed, in the presence of great issues. When difference of

opinion exists on general questions of vital interest to the state, minor differences are forgotten and parties are formed as people take sides on the main questions. In the past such divisions were often created along racial lines, especially if one race was an invader or conqueror. At the time of the Reformation religious differences divided the people and created rival groups in most of the states of Europe. The contest between king and people gave birth to political parties in England and the later revolutionary movements on the Continent. The form of union to be established by the American states, and the extent of national powers, were questions on which the people of the United States disagreed. Later the slavery issue created a wide cleavage of opinion. While important traces of the old contest between aristocracy and democracy still survive in modern political thought, most political issues at present are economic in nature, and parties usually represent different interests or attitudes on questions of economic policy and regulation.

Even in the absence of important issues or of natural lines of cleavage, political parties may retain their organization and strength. This will be the case in democratic states when the political party has become, legally or extra-legally, a part of the actual government, performing important functions in crystallizing public policy and in making nominations and carrying on election campaigns. To a certain extent party lines are perpetuated by habit and tradition and by the fact that they furnish the machinery through which one group or another comes into power and secures control of the important offices of government. This is often sufficient to prolong the life of a party long after the issues upon which it was based have ceased to be of importance. The party also acts as a unifying agency aiming to control and secure harmony of action among the various departments and divisions of government. In the United States, where the principles of separation and division of powers have been carried to greatest extremes, there is particular need for such a force. Executive, legislature, and judiciary are independent and may work at cross purposes. National, commonwealth, and local governments have distinct functions, with few points of contact. To bind these discon-

nected organs into a unity and secure the harmonious operation of the entire government of the United States, by controlling the officials and the policy of all departments in all areas, is the work of political parties ; and to do this work they have been compelled to develop and maintain a complex and powerful organization. In England the party performs a similar function in a different way. The effectiveness of the cabinet system, by which the party in power controls the executive through its majority in the legislature, depends upon permanent, well-organized parties, the one in power directing both legislation and administration, the one in opposition ready to take up this function at any time.

In both these states, then, and to a lesser degree in other modern states, political parties serve as the motive force in crystallizing public opinion, and the unifying agency that makes democracy workable over large areas. They are a constant protest against too great separation of administration from legislation and of local from central organization. Since the government of every state is a unit and must act as a unit, defects in organization, preventing unity, are made good by the growth of an extra-legal party organization whose strength will depend upon the work that it must do. In those states with many parties, temporary coalitions will control the government, but the party organization and influence will be relatively weak. In those states with but a single party, such as Russia, the party organization will be closely knit and its power over the government will be absolute.

A general summary of the functions of political parties may be stated as follows : In democracies they furnish the organization through which policies are formulated and political propaganda is carried on for the purpose of creating and influencing public opinion. When great issues arise they furnish a means by which citizens may subordinate lesser differences of opinion and decide questions of vital concern. Through their control over nominations and elections they become a part of the governmental machinery of the state, sometimes legally recognized, sometimes outside the legal organization of the state. To some extent they exist merely as the organization through which men attain to political power, and their contests are

carried on by rival groups seeking public office. Once in office, political leaders are often more concerned with retaining their power than they are with carrying out the announced policies of the party. The party system also tends to insure that the government at any given time will be subject to steady, organized criticism. the effect of which is usually wholesome. Where considerable separation or division of powers exists, parties serve as a unifying force, which by controlling the various organs of government secures harmonious and consistent policy and administration. Accordingly, other things being equal, political parties will be best organized and most powerful in the most democratic states, in states where the most critical issues are found, and in states where extensive separation and division of powers require an extra-legal unifying organization. Like other associations, political parties are made up of diverse factors. Conflicting social and economic interests of individuals and groups, differences of opinion on questions of governmental organization or policy, racial and religious cleavages, party habits, prejudices and traditions, the influence of great leaders who are followed with blind worship, the interests of those who control the party machinery,—all these enter into the composition of the party. Sometimes one of these elements predominates, sometimes another. Even at the same time some persons may be influenced in their party allegiance mainly by one consideration, others by quite different motives. The party thus becomes the focus for various groups who aim to control the government, to secure power for themselves, or to carry out certain policies.

History of Political Parties. The present position of political parties, generally recognized as essential factors in political life and in some states made a legal part of the governmental system, is comparatively new. Even in the eighteenth century, party government was not foreseen, and parties, commonly called "factions", were considered dangerous to public welfare. Party contents suggested disorder and violence, the overturning of established governmental institutions, revolution, and the death or exile of defeated leaders. Even in England, where party struggles were carried on earlier and with greater freedom than elsewhere, such conditions were

found. The framers of the constitution of the United States, while creating a form of organization that made parties inevitable, made no provision for them in their plan, and hoped that "factions" would be unknown in America. *The Federalist* warned repeatedly against the development of parties and party spirit. Washington, in his Farewell Address, uttered a solemn warning against the baneful effect of party spirit in democratic government. The theory of that period was that the people should select officials and representatives in whom they had confidence, and that these men should exercise independent judgment on questions of public policy. According to this theory parties could be only sources of distraction and weakness.

Considerable grounds for the former distrust of political parties were furnished by the history of those early semi-democratic states in which political parties were foreshadowed. The class struggles and factional quarrels in Athens and in republican Rome, the Guelph and Ghibelline contests that disturbed the Italian republics at the beginning of the modern period, the riots between the supporters of the House of Orange and the republicans in the Netherlands, and the civil war between the supporters of the Stuart kings and those of Parliament in England seemed to show the inevitable tendency to form voluntary associations as soon as some degree of democracy existed, and seemed conclusive proof that such factions were dangerous to public peace and political stability.

1. *In Great Britain*. In their modern form political parties originated in England, and it has been in English-speaking countries that party organization and influence have reached their highest development Some writers believe that as early as the time of Queen Elizabeth the Puritans. as a group with definite views on religious and political issues, formed a political party. At any rate, clear party lines were formed in the contest between king and Parliament during the Stuart period. The opponents of arbitrary government in church and state became known as Roundheads, while the supporters of the king were called Cavaliers : and these soon formed the opposing factions of a civil war. After the restoration of Charles II

these factions were known as Whigs and Tories, and represented two different theories of English constitutional relations. The Tories were the upholders of absolute monarchy ; the Whigs desired monarchy limited by Parliament. The Tories desired no change in the organization or functions of government ; the Whigs were interested in various proposals to extend democracy and promote social welfare.

After the Revolution of 1688 the more extreme Tories became Jacobites and finally died out ; the remainder became the supporters of the new king and gradually came to recognize the rights of Parliament and of the people. With the accession of the House of Hanover, the Whigs, the opponents of royal prerogative, found themselves the supporters of the new dynasty, while the Tories, the upholders of royal power, were the opposition. This destroyed the original issue, and party enmity and political violence subsided. For a time parties degenerated into personal factions among the ruling classes, but the way was prepared for new parties, based on modern issues and holding their present position in the government. By the time of George III the present Liberal and Conservative parties had been formed. The Liberal party became the advocate of reform and progress. They favored the widening of the suffrage, the provision of a more equitable system of representation, the removal of religious disabilities and of restrictions on industry and trade, and extensive legislation for the benefit of the working classes. The Conservative party emphasized order and security and favored a vigorous foreign policy. They held to the old historic point of view of the constitution, and desired to safeguard vested interests and resist dangerous innovations. When in power, however, they carried out many reforms as concessions to public opinion.

The supporters of home rule in Ireland formed a minority party, always in opposition to the party in power until the recent creation of the Irish Free State. The most important recent development in English party history has been the creation of the Labor party, representing the Socialist point of view, and its rapid growth to a position of parity with the older parties. As the Labor party increased its strength,

the Liberal party declined, many of the members joining one or the other of the more extreme groups. At present party contests in Great Britain are mainly between the Conservative and the Labor group.

The growth of British parties was closely connected with the creation of responsible government and of the cabinet system. The essence of the cabinet system is the control of government by a group of persons who are in substantial agreement upon political principles and policies, and the continuance of this group in power only so long as they have the support of a majority in the legislature. Experience has shown that the best way to secure a harmonious group of ministers is to select them from the same party, and that the only parliamentary majority with sufficient coherence and stability to make it dependable is a majority held together by ties of party. The cabinet system, therefore, arose out of the warfare of parties, and by historical growth and practical necessity is intimately connected with the party system. In Great Britain the party works as a part of the governmental system, not, as in the United States, as an extra-legal organization outside the regular government. Party leaders are also leaders in Parliament, as the heads of the government or as the heads of the opposition. The machinery of party and the machinery of government are practically the same thing. The cabinet system, bringing the two main departments of government into harmony, removes that burden from the political parties. Because of this harmonious relation between government and party there is less need that the national parties maintain strong organization in local areas. Consequently England is spared many of the evils of party overorganization prevalent in American local government. Besides, the area to be covered is comparatively small, and the number of elections and of offices filled by election is not extensive. The custom of frequent reelection and the fact that parliamentary candidates need not reside in the area from which they are elected diminish the importance of nominations. Accordingly, a completely organized party machinery is unnecessary, and the policy of the party is controlled largely by its recognized leaders.

2. *In the United States.* In the American colonies party alignment and party names were similar to those in the mother country, and in most of the colonies a contest was carried on between the governor, representing the Crown, and the assembly, representing the colonists. The conservative group who supported the British interests were known as Tories ; the more radical group, who demanded colonial home rule and more democratic government, were called Whigs. As the Revolution approached, the Whigs, or Patriots, as they were then called, secured possession of the government, and the outcome of the war destroyed the Tories as a political power, since those who did not migrate to Canada or England were compelled to accept the new state of affairs.

After independence was secured the form of union became the chief issue. Those who desired a strong central government and favored the adoption of the Constitution organized as Federalists ; their opponents, as Anti-Federalists. This political division was substantially according to the interests affected, the financiers, manufacturers, commercial men, traders, and public creditors, centering mainly in the seaboard towns, being the chief advocates of the Constitution, and the farmers and debtors, especially in the inland region, being its chief opponents. After a bitter fight in every state the ratification of the Constitution destroyed the Anti-Federalists as a party ; but the same general division has existed to this day. On the one hand are those that favor a liberal interpretation of the Constitution and general extension of national power. On the other are those that uphold a policy of strict construction and nonexpansion of governmental activities. In general, the party in power leans to the former attitude, and the party in opposition to the latter. Constitutional theory has often been used to attack or defend the particular interests and issues of the period, and has not been applied consistently by any party.

During Washington's administration the opposing elements crystallized into the first parties under the Constitution. The Federalists, led by Hamilton, favored strong national government and protection of property interests. They were friendly to England in her great contest with France because of their commercial and financial relations with England and because

they had no sympathy with the revolutionary doctrines of the French Revolution. Their chief strength was found among the aristocratic commercial and manufacturing classes. They favored a financial policy that would strengthen the national government, encourage manufactures and trade, and align the propertied classes on the side of the government. The Republicans, led by Jefferson, emphasized the rights of the individual and opposed extensive governmental authority. They attacked government by a privileged few and aroused the class consciousness of the masses. They were interested in agriculture, rather than in trade and manufactures, and found their chief support among the debtor class, especially the farmers and laborers. They were friendly to France, where the revolutionists were proclaiming similar principles, and were more interested in democratic local government than in a vigorous national system. In a general way this political alignment has been continued in the evolution of American parties. The Whig party of Webster and Clay and the Republican party of McKinley and Coolidge bear a family resemblance to the Federalist party of Hamilton ; the Democratic party of Jackson, and later of Bryan and Wilson, had its origin in the Republican party of Jefferson.

A number of causes led to the disappearance of the Federalist party. Among these were the growing democratic spirit of the country, the unpopularity of John Adams and the rift between him and Hamilton, and the opposition to certain Federalist measures, such as the Alien and Sedition Acts. More important was the fact that the Republicans, who came into power in 1801, took over the strongest principles of the Federalists and were joined by many former Federalist leaders, especially among the large planters of the South. Once in power, the Republicans were willing to strengthen and expand the powers of the national government and to protect the interests of the financial and commercial classes. The Federalist party was destroyed by the success of its own principles in the hands of its opponents. Deserted by its strongest leaders and discredited by its opposition to the War of 1812, the Federalist party ceased to be a factor in national politics after 1816. As a result, for a period of more than a decade there

were no distinct issues and no strong parties. Men divided on personal grounds, and this so-called "era of good feeling" was really a period of bitter personal politics.

By 1830 new parties were being formed as a result of new issues and of significant changes in American life. The pioneer population of the Western lands and the laborers in the growing industrial cities strengthened the democratic element, who found their hero in Andrew Jackson His followers took the name of Democrats, extended Jefferson's ideas concerning popular sovereignty, and applied the strict-construction principles in the form of opposition to the tariff, the National Bank, and internal improvements. The opposition movement, led by Clay, finally took the name of Whigs and, like the earlier Whig party in England and the colonies, opposed the "alarming extension of executive power and prerogative," as developed by Jackson. Supported by the financial and industrial interests of the North and by the aristocratic planters of the South, this party, composed of divergent interests, favored the National Bank, the protection of domestic industries, and the building of roads and canals. Its various elements were held together mainly by opposition to the Democrats.

As the slavery controversy became critical, it split both parties and led to a sectionalization of issues. Western farmers who favored a homestead policy, Eastern manufacturers who desired a protective tariff, and those who opposed the extension of slavery into the territories or who aimed at its abolition combined to form the Republican party. The South, as usual in the case of a minority interest, fell back on the doctrine of states' rights. A split of the Democratic party into Northern and Southern factions made possible the election of Lincoln and precipitated the Civil War. Although this contest removed the most important issue, the Republican and Democratic parties retain their names and organization to this day. As a survival of the Civil War, the Democratic party remains firmly intrenched in the South, but it also draws much strength from the laboring population of the large cities. These two discordant elements of the party differ on many issues, especially on racial discriminations.

The Republican party, usually in power, is also divided into conservative and progressive elements. After the Civil War the chief issues concerned the regulation of trusts and railways, the tariff, and the currency. More recently questions of foreign policy have become important in American politics. At present no clear-cut issues separate the parties. Most questions are raised for campaign purposes, and the party in power adapts its policies to circumstances and to public opinion. The real alignment of public opinion between city and country, between agriculture and industry, between conservative and radical, is not represented in the existing parties.

In addition to the main current of politics in the United States, numerous small parties, standing for particular or temporary interests, have arisen, but have never exerted a controlling interest in politics and have seldom been strong enough even to hold the balance of power. The Progressive party, under Theodore Roosevelt, came nearest to the proportions of a major party Socialist and Labor parties maintain their organizations but have not as yet attained much strength.

At the present time it is in the United States that political parties show the most highly developed organization and exercise the greatest powers. A number of reasons for this condition may be given. Great extent of territory and a large population composed of various nationalities and including numerous interests and sections make it difficult for the majority, unless organized, to express its will. The separation of executive and legislative departments and the division into national, commonwealth, and local areas create a system of governmental decentralization necessitating some extra-legal unifying agency to secure harmony in action. Moreover, the large number of elective officials and frequent elections have given strength to parties through their control of nominations and election campaigns. This is particularly true in the election of the president, around which political interest is centered. In the actual working of the method provided by the Constitution, it soon became evident that the real selection would not depend upon the judgment of the electoral college. Since its members assemble by commonwealths, not meeting together for deliberation, the electoral college

became a mere machine for registering the popular vote as modified by electoral distribution. In the large electorate thus created for choosing the national head, some organization to control nomination and election was inevitable ; and, not provided for in the constitutional system proper, it grew up outside the framework of the government, in the form of strong party organizations.

3. *In continental Europe.* The history of political parties in the various states of continental Europe is a complex and confusing story. Arising during the various revolutions through which the existing degree of democracy has been evolved, they neither represent consistent lines of development nor are based on uniform political principles. In no European states have two permanent and well-organized parties developed, nor do parties in general occupy as prominent a place in government as they do in Great Britain and the United States. Party groups are numerous, formed on lines of nationality, religion, class spirit, foreign policy, and economic interests. Personal followers of formerly royal families or of present popular leaders form additional political groups, and shifting combinations are held together temporarily by common grievances or by common hope of gain. In each state peculiar conditions of national life or particular phases of national history give rise to groups that, for a time at least, consider themselves political associations. Party history is therefore a series of kaleidoscopic changes, concerted action in time of crisis or under a powerful leader being followed by disintegration as minor differences again assert themselves or as parties are manipulated by skillful statesmen. Aside from parties formed on national or religious lines, and from those opposed to the existing form of government, various shades of conservatism and radicalism are represented. In general, the socialists and the communists exhibit the most definite policy, branches of these parties being found in all the leading states. The control of government by a single party, which forbids organized opposition, as in present-day Russia and recently in Italy and Germany, is a new development in party government.

Party Reform. While the existence of political parties is now generally accepted as essential to the workings of demo-

cracy on a large scale, criticism of the party system or of certain defects and evils that result from its practical operation has been widespread. It has been pointed out that the existence of several great organizations, within which there is supposed to be substantial agreement on questions of governmental policy, is contrary to the psychology of human nature. People are not divided into a few great groups, but hold all shades and combinations of opinion. Those who agree on one issue differ on others. Party agreement is therefore artificial, party programs are insincere, and party rivalrly is devoid of principle. Some have urged numerous parties, each devoted to a single issue, forming spontaneously as the problems of government arise. The difficulty of applying this method in practice is obvious. Numerous improvised parties cannot possess the organization needed for purposes of political propaganda, and candidates whose attitude would please the voter on one issue might displease him on others. The necessity of bringing vast numbers of men together on a common ground of political action necessitates large national parties, though their unity may be to a large extent artificial.

It is usually believed that the best political conditions exist where there are but two well-organized and opposing political parties. These check each other and prevent either from becoming too extreme, since each will be anxious to attract to its ranks adherents of the other and to appeal to the independent voters not attached strongly to either party. Hence the policies of the party in power will probably not be seriously objectionable to any considerable part of the population. Where the two parties are fairly equal in strength, the government is more likely to be honest and efficient, because of the fear of the other party's coming into power if dissatisfaction exists. Where the opposition is weak, the party in control can abuse its power with considerable impunity. The existence of a considerable number of intelligent independent voters also acts as a deterrent to misgovernment by the party in power. When numerous parties exist the tendency is to resort to logrolling, by which the stronger parties make concessions to the weaker ones in order to obtain their support. Thus it may happen that weak parties who hold the balance of power may

force the adoption of policies that are opposed by a large majority of the people. The instability of a government resting upon a coalition of several parties is also an objection to the multiple-party system.

Some critics urge the complete abolition of political parties. They argue that the party system is destructive of democracy, that party control suppresses those individual opinions and actions that are the very essence of free government, and that it is a device for preventing the expression of general will, obscuring public opinion, and setting up a new form of despotism. When the government is controlled by parties the voter is politically effective only as a member of a party, and as such he is compelled to sacrifice his individual opinions for the sake of party harmony. Party contests are waged not on principles, but by every means, fair or foul, to win success. The party in power "points with pride" to its achievements ; the party out of power "views with alarm" all the acts of its opponents. Politics thereby becomes a sort of game between the "ins" and the "outs" ; the latter often misrepresenting and thwarting the actions of the former, even when they know them to be good, in the effort to supplant them in the favor of the people. These critics argue that parties exist largely because of the indifference of the voters, and frequently urge nonpartisan elections. Here, again, the difficulty of working democracy without organization appears. Besides, it is not clear that if parties exist because of the indifference of the voters, the voters would be better off without them. Parties at least accomplish something ; unorganized and indifferent voters could do nothing.

Much criticism has been directed against the intrusion of national parties and national issues in local elections, with the resultant destruction of local self-government and the difficulty of waging local elections on questions of local interest. The evils of carrying the organization of the national parties into the local units and of basing local elections on national party lines is greatest in cities. Several methods have been suggested for the remedy of this evil ; the holding of local elections at different times from national elections, as is done in many European states ; the organization of separate local parties on local issues ; and the use of nonpartisan elections, with nomination by

petition, for local purposes. The objection to these devices is that national parties have their roots in the local units and cannot maintain their organization or discipline if local organization is based on local issues or upon nonpartisan grounds.

Parties are often criticized on the ground that they are extra-legal organizations, outside the regular machinery of the government, and therefore tend to be irresponsible and uncontrolled. The result is unusual opportunity for boss rule, machine politics, corruption, and misgovernment. The large sums of money spent by the parties, the improper sources from which campaign funds are secured, and the improper uses to which such funds are put are frequently pointed out. As remedies for these evils, full publicity and legal recognition and regulation of the parties are usually suggested.

It is in the United States, where parties are powerful and highly organized, that the evils of party government have been most conspicuous and that reform has been most needed. The causes of this condition are complex and closely interrelated, and can only be suggested here. The American system of decentralized administration and the large number of officials elected for short terms have given the parties control over numerous unrelated officials. This has led to the spoils system, by which governmental positions are looked upon as a proper reward for party service. Civil-service reform and further centralization in administration and the increased use of experts in government promise improvement. Many believe also that fewer elected officers and longer terms, and consequently a shorter and simpler ballot, would increase intelligent and active interest in elections.

The irresponsibility of the party, owing to its extra-legal position in the American constitutional system, is largely the reason for its overorganization and for the growth of the party machine and boss. It is, of course, evident that party organization is necessary, and that the leadership of a comparatively small number of persons must control the routine of party action. Such machinery becomes dangerous when under improper leadership, and when it assumes the sole right to select candidates, prevents the real wishes of the majority of the party, and uses its powers for selfish or improper ends.

The American political system makes little provision for real and responsible leadership, such as the cabinet system provides in most countries ; and the ordinary voters, little interested and unable to give time and attention to the mass of party work, leave the actual operation of party organization to a small group of professional politicians. Caucuses, committees, and conventions are composed of their henchmen; prearranged slates take the place of nominations ; and through punishment of political opponents and rewards, direct or indirect, to political followers, the unity of the party and the power of the machine and boss are maintained.

For this feudal system in politics, efficient in controlling votes and quite natural under the conditions of American political life, several remedies have been proposed. Legal recognition of the party, by which all party members are guaranteed an equal voice in party management and by which responsible party leadership may be developed, accomplishes much. The system of direct primaries, in which nomination by party caucus or convention is replaced by nomination by petition, followed by a preliminary election to select candidates, receives support in some quarters. There is always the possibility that voters may be aroused to an active interest in public affairs, or even that independent parties may be formed if the personal government of the machine becomes too burdensome.

The connection between national and local politics is especially close in the American system because of the extensive division of powers in a federal system and because of the strength of the two-party system. While national issues differ materially from those in the commonwealths and these, in turn, differ from those in cities or local districts, the national organization of the party permeates all areas and controls most elections. The need for organization, to which purpose the local units are best adapted, thus subordinates local issues to party unity, and local patronage is used as a reward for party service. Recent attempts to separate national and local issues have met with fair success, especially in the larger cities, and local elections have been fought out on local issues or held on a nonpartisan basis. The suggested remedy of holding national

and local elections on separate days has the advantage of emphasizing the different questions at issue, but it has the disadvantage of increasing the number of our already numerous elections.

One of the chief dangers in American politics is the close connection between the parties and business interests, resulting in the graft evil. For this purpose boss rule in the party and the corporate form of business organization offer convenient points of contact. Corporations desire favorable legislation or public franchises or profitable government contracts, and wish to avoid heavy taxes. The politicians in control of the party desire the support of corporation influence or financial contributions to the campaign fund. The irresponsibility of party leaders and the lack of publicity concerning party receipts and expenditures offer opportunity for improper relations. Governmental regulation of both parties and corporations and full publicity concerning corporation and party finances, together with higher ideals of political and business ethics, are needed. The connection between the party organization and the criminal underworld, especially in the large cities, opened opportunities for graft in connection with various 'rackets.'

In recent years the growth of labor unions, especially the powerful Congress of Industrial Organizations (C.I.O.), has made them an important factor in politics, particularly in their organized effort to elect candidates favorable to labor. By having large funds available, numerous voters, organized committees, and access to various means of publicity, they have become one of the most active influences in American political life. As in the case of corporations, many abuses of this power have resulted, with growing demand for governmental regulation of their campaign expenditures and political actions. The Taft-Hartley Labor Act (1947) was, in part, an effort to restrict improper political action carried on by organized labor.

Throughout American history emphasis has been laid on political rights, without sufficient attention to the corresponding political duties and obligations. The right to vote has been demanded, but the public responsibilities thereby implied have not been sufficiently realized. The successful working of

democracy and of the party system demands from the citizens active and intelligent participation in public affairs, willingness to serve, and the placing of the public interest above party, class, or selfish interests.

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CHAPTER XVIII

THE LEGISLATURE

OUTLINE

Development of Legislatures
Structure of Legislatures
1. Bicameral system
2. Unicameral system

Theories of Representation
1. Basis of representation
2. Relation of representative to voters

Upper Houses
1. Method of selecting members
2. Theory of upper house

Lower Houses
1. Method of choosing representatives
2. Term of representatives
3. Qualifications of representatives
4. Basis of representation
5. Territorial areas of representation
6. Residence in district
7. Majority and plurality elections

Organization and Procedure of Legislatures
Functions of Legislatures
Systems of Formulating Legislation

Development of Legislatures. In early states the making of law was not an important function of government. Law was viewed as divine in origin, or as existing in long-standing customs and traditions, or as deduced by reason from fundamental natural principles. Such new laws as were made were created by rulers or magistrates, or by the free citizens meeting occasionally in direct assemblies. Representative legislatures, as regular and permanent organs of government, are of comparatively recent origin. Considerable difference of opinion has existed concerning the beginnings of the representative

system.[1] The traditional theory is that it grew out of the primitive Teutonic folkmoots, or assemblies of freemen, in the countries of northern Europe. These were composed of the leading members of the tribe, who acted as an advisory council and decided important questions of general policy. In England an assembly of this type, the *witenagemot*, or council of wise men, composed of the most important men in the kingdom, was summoned by the king to meet several times each year. This body developed gradually into the Great Council of the Kingdom, whose consent was necessary to the levying of new taxes ; and from it, in turn, was finally developed the first representative national legislature.

The British Parliament arose through the broadening of the old council by the introduction of chosen representatives of certain new elements of society, followed by the division of the resulting members into two distinct branches, or houses. When kings were in need of money they reached down to the lesser landowners, who held much of the wealth of the country and who were too numerous to assemble *en masse*. Accordingly, these landowners were asked to designate certain of their number to represent them and to agree to a royal levy upon their possessions. By 1265 all the elements in the nation who were in a position to give aid had been called upon,—the barons, the clergy, the knights of the shire, and the burgesses of the towns. Gradually the Parliament thus formed became a regular feature of the governmental system. Representation at first was not viewed as a privilege or a source of power, but as an unwelcome duty imposed by the king. The object was not democratic government but the increase of the royal revenue.

At first Parliament assembled as one body, but later it separated into three groups, representing the three classes, or estates, into which society was divided,—nobles, clergy, and

[1] See E. A. Freeman, *History of Federal Government*, Chap. II ; C. A. Beard, "The Teutonic Origins of Representative Government," in *American Political Science Review*, February, 1932 ; H. J. Ford, *Representative Government* Chaps. I-IX. The representative system was used to some extent in local government in Anglo-Saxon England and in the church, especially by the Dominican order. The royal government took over this principle and applied it in national affairs.

commons. Gradually, however, a new alignment took place. Having many interests in common and accustomed to work together in the Great Council, the higher nobles and clergy came together in one body, the House of Lords. The lesser clergy ceased to attend and voted their contributions in ecclesiastical assemblies. The lesser barons threw in their lot with the knights and burgesses and formed the House of Commons. The members of the House of Lords attended in response to individual summons and represented the feudal principle of the representation of classes. The members of the House of Commons attended in a representative capacity, and originated the modern principle of representation of localities. The system of two houses arose not from and clear purpose, or because there was any opinion that two houses were desirable, but rather from the force or economic and social circumstances and interests.

On the continent of Europe the development of representative parliaments came later and proceeded more slowly and irregularly and along somewhat different lines. In Spain, France, and Germany medieval assemblies appeared, composed of members of the classes of feudal society ; and considerable impetus to the idea of representations was given by the growth of cities and by their demand for representation in the national parliaments. Usually the delegates from each class were summoned separately and voted in separate chambers. Hence, in contrast to the English system of two houses, there arose three, or sometimes even four, separate houses in the Continental parliaments. Each house was jealous of its own powers and concerned itself only with the interests of its own class. The delegates who were sent were given strict instructions from the group that sent them, and viewed themselves as agents sent to watch over the interests of their class and to deal and bargain with similar agents of the other classes. The idea that representatives were sent to represent the whole people of a community or to care for the general interests of the nation as a whole did not exist. In some cases, as in France, these medieval assemblies, after irregular meetings for several centuries, ceased to exist. Not until the time of the French Revolution was the principle of representation by

classes abolished in favor of a system of national representation, and not until the nineteenth century were national representative legislatures in the modern sense generally established in Europe.

The lawmaking power, now the most important function of legislatures, was a matter of slow development. At first the meetings of these bodies were irregular and of short duration. Even in England, until comparatively recent times, Parliament did little more than present petitions and request redress of certain grievances. Control over financial matters, however, gave Parliament a lever which it used to strengthen its position. The costs of government and war compelled the king to appeal to Parliament for supplies, for which, in return, Parliament demanded new laws, which were granted by the king in the form of statutes. Later, Parliament itself formulated the statute and presented it to the king for his assent. Finally, the king lost even his power to veto the laws enacted by Parliament. As a result of this development both the taxing power and the lawmaking power passed into the hands of the national legislature. On the continent of Europe a somewhat similar development took place. However, the legal theory that the king exercised the lawmaking power, with the consent of the people's representatives, survived in Prussia until the close of the First World War and was a constitutional principle in Japan.[1] By a gradual process the deliberate creation of law has become a political function, and this power has been transferred from autocratic rulers, supported by groups of nobility and clergy, to representative bodies including all classes.

Structure of Legislatures. In modern democratic government, legislatures are concerned with deliberation and discussion, with the balancing of policies and the compromising of conflicting motives. It is therefore essential that they include a number of persons sufficiently large to represent all important sections, interests, and classes, yet small enough for effective deliberation, and that they derive their authority ultimately from the mass of the people, on the basis of a wide electorate. The term of the representatives should be long enough to enable them to acquaint themselves with the prob-

[1] Constitution of Japan, Article 5.

lems and procedure of their body, and short enough so that they do not lose touch with public opinion. Some political thinkers favor a fixed term ; others believe that the legislature should be dissolved and a new one selected when a vital issue arises on which it is desirable to consult the wishes of the people.

1. *Bicameral system.* Most states have adopted the policy of dividing their national legislature into two houses, forming what is called a *bicameral legislature.* This was the result, in part, of the historical development of the British Parliament into the House of Lords and the House of Commons, and this compromise between the former authority of the nobility and the growing demand for popular government was found useful in many European states. In some cases, as in the United States and in the German Empire, the bicameral system was found valuable for purposes of compromise between national and confederate interests in the formation of federal unions. Other states deliberately adopted this form of organization because of certain theoretical advantages which were believed to accompany the existence of two houses. For a long time it was regarded almost as axiomatic that legislatures should consist of two chambers. Among the arguments used to support this view were the following :

a. Two houses secure deliberation and caution and give better balance and more carefully analyzed and digested legislation. A single chamber is in danger of being rash and one sided, swayed by emotion or passion, satisfied with incomplete and hasty generalizations. Between two houses there is likely to be healthy rivalry, causing each to subject the measures of the other to careful scrutiny and resulting in more careful analysis of principles and needs than would be the case if the contest were between a majority and a minority in a single house only. By interposing delay between the introduction and the final adoption of a measure, the second house compels time for further reflection and deliberation.

b. Two houses make possible a more correct interpretation of general will. A single house, especially if all its members are elected at one time, is in danger of growing out of sympathy with popular opinion before its term expires. Two

houses, chosen at different times or for different terms, may remedy this defect, and may represent more accurately public opinion on new issues that appear.

c. The bicameral system affords a convenient means of giving representation to special interests or classes in the state. This is particularly true in the federal form of government, where one house may represent the nation as a whole on the basis of population, and the other may represent the units composing the federation as distinct political organizations. In unitary states one house may be used to give representation to the aristocratic elements of society or to the interests of capital, and the other to represent the democratic elements or the interests of labor. This may be done by making membership in one house hereditary, or appointive, or elective on the basis of higher qualifications or a restricted suffrage. In this way the conservative attitude of one chamber may curb the radicalism of the more popular chamber.

d. The bicameral system protects individual freedom against legislative despotism. In all lawmaking power were concentrated in a single house, the danger of this body's drawing to itself all political power in the state and of becoming corrupt or tyrannical is increased. The security of liberty is protected by the existence of two houses, each of which may check any tendency toward despotism on the part of the other.

e. The existence of two houses promotes the independence of the executive. In modern democracies a single house, feeling that it represented popular will, would tend to subject the executive to its control, thus destroying that separation between legislative and administrative departments which many believe desirable. Where two houses of nearly equal strength are found, the executive cannot be made responsible to both ; hence, in checking each other, the two branches of the legislative organ permit to executives a greater degree of freedom of action and of responsibility.

2. *Unicameral system.* Toward the close of the eighteenth century and during the early years of the nineteenth, some thinkers favored legislatures of a single chamber. This attitude was the result of the theory of that period that the people were sovereign in the state and that the general will of the

people should be expressed in the form of law. It was held that a single chamber, directly representing the people, should be the depository of the undivided sovereignty of the state, and that the common will could best be expressed by such a body. Benjamin Franklin in America and Jeremy Bentham in England supported this doctrine. Several of the American states provided for legislatures of a single house in their first constitutions, and a national congress, of one chamber only, was set up under the Articles of Confederation. In France, at the time of the Revolution, the unicameral system had able supporters, chief among whom was Turgot ; and a national assembly of a single house was provided for in the constitutions of 1791 and 1793. By 1800 all the American states except Pennsylvania had adopted the bicameral system, and Pennsylvania soon followed. The lack of a second chamber was believed to be one of the weaknesses of the government under the Articles of Confederation, and practically all the framers of the American constitution favored the creation of a second chamber. France also soon abandoned the principle of a single house, as did several other European and Latin-American states that tried the experiment. It was generally held, as a result of this early experience, that single chambers were characterized by instability, violence, and passion, and that their actions were unbalanced and impulsive. The theory that a check was needed to secure greater deliberation and caution was generally accepted, and it was believed that this could be best accomplished by adding a second chamber.

In recent years the idea of a single chamber has been revived and has found favor among many political writers. A number of European and Latin-American states[1] established legislatures of one house. The same system is found in most of the Canadian provinces, in the cantons of Switzerland, and was adopted by members of the German and Austrian federations. Several of the new states[2] created after the First World War provided in their constitutions for national legislatures of a single house. Some of the American commonwealths have

[1] Greece, Bulgaria, Rumania, Costa Rica, Honduras, Panama, Salvador, Dominican Republic.

[2] Yugoslavia, Estonia, Finland, Latvia.

made serious efforts to abolish one of the houses in their two-chambered assemblies, because of frequent delay and deadlock between the two houses. Nebraska adopted the single-chamber system in 1934. The single-chamber principle is supported on the grounds that it is simple, that it definitely locates responsibility, and that it furnishes a means for a direct, authoritative representation of the electorate. In municipal government the principle of a single council has been widely accepted. It might be added that conventions for creating or revising constitutions are invariably unicameral in structure, and that a single board of directors, exercising general direction and rule-making powers, is the system universally employed in large private corporations. In many states where two chambers have been retained the tendency has been to reduce the powers of the upper house and to concentrate lawmaking authority in a single chamber. This process has been most marked in England, where the House of Lords can at most only delay legislation desired by the House of Commons. In the new constitutions of several European states[1] provision was made by which the lower house might override the wishes of the upper house. This change was due in part to the growth of democratic sentiment, which opposed the power of aristocratic upper houses, and in part to the growth of the cabinet form of government, which tends to concentrate authority in the chamber to which the administrative heads are responsible. To some extent, however, it represents the abandonment, as a result of experience, of the old theory that two chambers with relatively equal legislative powers are desirable.

Many modern writers point out that the bicameral system represented a transitional stage in political development, when contests were being carried on between the aristocratic and democratic ideals of government and between local and national spirit in the formation of federal unions. Under such conditions it provided a means of compromise by which both the contending parties might be represented. They argue that in modern democratic national states the legislature should consist of a single house, asserting with Bentham that if the

[1] Germany, Austria, Poland, Czechoslovakia.

second chamber agrees with the first it is superfluous, and that if it disagrees it is obnoxious. Even in federal states the upper house has not prevented a tendency toward national centralization. On the contrary, by emphasizing an artificial equality among the members of the union where no real equality exists, it has overrepresented the minority and has prevented necessary and widely desired changes from being made. Experience has shown that second chambers seldom provide an effective check on hasty and ill-considered legislation, but that they frequently result in deadlocks, in log-rolling practices between the two houses, and in lack of real responsibility on the part of either house. One house frequently passes an undesirable bill in the expectation that the other house will kill it. The added expense of the bicameral system also has been criticized. Those who favor the unicameral system believe that a single, popularly elected chamber, composed of a comparatively small number of members, will best secure deliberation and real responsibility.

Theories of Representation. In the development of the representative system important questions have arisen concerning the basis on which representation should rest and concerning the proper relation of the representative to those who select him.

1. *Basis of representation.* When the system of representation arose in the medieval period, it was accepted without question that representation should be based on the social classes or estates into which the people were divided. The clergy, the nobility, and the commoners in country and in town sent their delegates to represent the interests of their respective classes. With the growth of democracy and the gradual abolition of class distinctions, the doctrines of human equality and popular sovereignty appeared, and the theory of representation according to population gained ascendancy. By various reform movements the inequalities in the old system were removed, and states were divided into territorial districts from which members were sent in proportion to the number of inhabitants. According to this principle each representative should represent approximately the same number of people as every other representative, and the most con-

venient means of accomplishing this purpose was to create territorial areas as nearly equal in population as possible. It was assumed that the interests of the people within these districts were essentially alike, and that the majority within each district should select the representatives for the appropriate fractional part of the population. On this basis most present-day states have organized their representative systems.

In recent years the system of representation based upon population groups in geographical areas has been attacked by many writers[1] as artificial and out of harmony with present conditions. They argue that people living in the same area do not necessarily have interests in common and that modern society is composed of classes based on function or occupation. They believe that these groups, which have real interests in common, should be organized regardless of territorial lines and should select representatives to look out for their interests. The legislature would thus become a mirror of the varied interests of society, representing the classes, professions, occupations, and other groupings into which the population is naturally divided, rather than artificial political and geographical units. Some, who favor the bicameral system, would have one house represent the people numerically and the other represent the occupational groups.[2] To some extent the principle of vocational represensation has been applied in the new governments of European states. It underlies the Soviet system in Russia and the syndicates used by the Fascist government of Italy. A number of states[3] made provision for advisory economic councils, representing various business interests, and had conferred upon them the power of collaborate with the legislature in the formulation of measures relating to economic and social problems.

The theory that representation should be based on functional groups within the state is criticized as unsound in prin-

[1] G. D. H. Cole, *Social Theory*; M. Duguit, *Manuel de droit constitutionnel*, Sec. 57; G. Wallas, *The Great Society*; S. G. Hobson, *National Guilds and the State*; M. P. Follett, *The New State*.

[2] W. S. Carpenter, *Democracy and Representation*; S. Webb and B. Webb. *Constitution for the Socialist Commonwealth of Great Britain*, Pt. II, Chap. I.

[3] Germany, Poland, Yugoslavia, and others.

ciple and unworkable in practice. Opponents of the plan argue that it is inconsistent with the principle of national sovereignty, which is best maintained by choosing representatives who have at heart the general interests of the people as a whole rather than the special interests of particular classes. They believe that the representation of numerous economic groups would emphasize class differences and conflicts, and would lead to anarchy and confusion. The system of group representation, they believe, would narrow the vision of the representatives and diminish the efficiency of the legislative body. It would divide the legislative assembly into numerous unstable groups, which would form shifting coalitions and make frequent bargains among themselves but would be incapable of prompt and vigorous action. The overlapping of group lines and interests and the difficulty of apportioning members fairly among the various groups present practical difficulties to the operation of the plan. Most political thinkers believe that the present system of apportioning members according to population and of selecting them from territorial areas on the basis of party alignment is, in spite of serious defects, preferable to the attempt to represent separately the varied and numerous interests in the modern state.

2. *Relation of representative to voters.* Wide difference of opinion has existed concerning the relation of a representative to those who select him. According to one point of view the representative is merely the agent of the voters of the constituency or district from which he is sent, and his chief duty is to look out for their welfare and secure appropriations or other favors that will further their particular and local interests. From another point of view the representative acts for the people of the state as a whole and is expected to consult with other representatives having the same outlook and to use his individual judgment for the purpose of promoting the general welfare and the national interests of the entire country. From a third point of view the representative is considered primarily an agent of the party that elects him and is expected to align his vote with other members of his party, regardless of his personal attitude or of the wishes of his constituents, when important questions are before the legislature.

When the system of representation was first developing, the representative was generally viewed as the agent of the class or group that selected him, subject to instructions and to recall if he failed to carry out their wishes. This principle survived to some extent in the upper houses of monarchies, whose members represented the privileged classes in the state, and in the upper houses of federal states, whose members represented the political units in the federal system. With the growth of democratic and national sentiment, the theory that the representative should act in the interests of the nation as a whole received wide acceptance. The former doctrine that the representative should act under definite instructions was replaced by the principle that he should use his own judgment on questions of public interest. This principle has been written into the constitutions of many European states, and is supported today by the great majority of political thinkers. In theory, at least, modern representatives are expected to act independently of local or party control and to decide issues on the basis of national welfare. They are expected to be men of superior knowledge and experience in statecraft, whose opinions will be trusted by the people who choose them. In practice, however, representatives are always influenced by widespread popular opinion, by the necessity of pleasing the voters who select them if they wish to be continued in office, and by the necessity of aligning themselves with the party to which they belong on important questions if they wish to play any important part in the legislative body. Occasionally a representative who acts independently, regardless of public clamor, or local pressure, or party affiliation, may retain the confidence of the voters and may exert a powerful influence on legislation; but such a position is usually difficult to maintain.

Upper Houses. The upper houses of modern states exhibit considerable diversity in structure and usually contain important survivals of historical development. In the qualifications of their members and in the methods by which those members are chosen they often show traces of the class control that preceded modern democracy; and in the basis of their representation, especially in federations, they indicate the historic units by whose combination the state was formed. As

distinguished from the lower houses, whose members are usually elected directly and are representative of the population according to numbers, the members of upper houses are usually selected indirectly and in many cases represent special classes or interests or local governmental organizations.

1. *Methods of selecting members.* The following are the most important methods by which members of upper houses have been and are selected, a number of states combining two or more of these methods of choice :

a. Heredity, as in the British House of Lords and the Japanese House of Peers.

b. Appointment by the executive, as in the Italian senate, the Japanese House of Peers, and the senates of Canada and the South African Union. In some cases appointment was for life ; in others, for a fixed term.

c. *Ex officio*, that is, by virtue of holding some other office. Such are the higher clergy in the British House of Lords and certain members in the senate of Rumania.

d. Direct election, as in the Senate of the United States and in the senates of the American commonwealths and of Australia, New Zealand, Poland, Czechoslovakia, and most of the Latin-American states. To avoid making the upper house a duplication of the lower, when direct election is used, several devices are used. A different territorial basis of representation may be utilized, different qualifications may be required of candidates, and election may be for a different term.

e. Indirect election, as in France, Denmark, the Netherlands, Prussia, and other countries. In most of these states the members of the upper house were selected by the members of local legislatures and councils, who in turn were elected by popular suffrage. The Belgian senate includes certain members chosen by the senate itself. In Italy it was proposed to have the senate composed of members selected by various industrial and labor organizations.

Considerable difference of opinion exists concerning the merits and defects of these methods of selection. The hereditary principle, once in wide use, has now almost disappeared. The method of appointment affords a means by which men of

distinguished ability and experience, who for some reason would not be chosen by popular election, may be added to the body. If appointment is for life or for a long term of years, members may be free from the influence of party politics and may acquire useful experience. On the other hand, if appointment is used as a reward for party services or for campaign contributions, corruption in government is encouraged. Besides, a body which is composed of members not responsible to the voters is in danger of growing out of touch with public opinion and of losing the confidence of the people. Direct election, while in harmony with modern ideas of democracy, tends to make the upper house a duplication of the lower, with frequent contests and deadlocks between the two houses. It may also lower the caliber of membership, since many able men will not seek election under the conditions that prevail in present-day politics. Indirect election by local legislatures and councils has the disadvantage of placing upon those bodies duties that distract them from their real functions and of increasing the influence of national issues and national party organization in local elections. It was largely for these reasons that direct election of senators was demanded in the United States and that a similar proposal has been urged in France.

2. *Theory of upper house.* Most political thinkers who favor the bicameral system believe that the upper chamber should rest on a different basis from the lower, but there is no general consensus as to the proper composition of the upper chamber. In general it is held that the upper chamber should be smaller in size, that its members should enjoy longer tenure and should possess higher qualifications, and that they should be chosen by a somewhat differently constituted electorate, possibly with the addition of appointed or *ex officio* members. If the justification of a second chamber rests on the desirability of securing deliberation and a reconsideration of measures, the question may be raised as to whether its power should not be restricted to these functions, that is, whether the initiation of all measures should not take place in the lower house and the authority of the upper house be limited to considering these measures and returning them to the lower

house with recommended changes, the final decision resting with the latter body.

Lower Houses. In contrast to the diversity in method of choice and in basis of representation that is found in upper legislative chambers, modern states are in substantial harmony concerning the composition of their lower chambers. These bodies, coming into power as a result of the democratic development of the past century, contain few historical survivals and show practical agreement on the following points:

1. *Methods of choosing representatives.* In modern states representatives are elected on the basis of a suffrage nearly universal. Subject to certain qualifications. previously considered,[1] modern states extend the right of choosing representatives and eligibility to membership in the lower chamber to a large proportion of their citizens. Direct election on the basis of an equal and secret suffrage is the general practice.

2. *Term of representatives.* The term of office is relatively short, so that the voters may keep in touch with their representatives, may express approval or disapproval of their actions, and may express their attitude to new issues as they arise. While the maximum term of office is always fixed, the actual tenure may be indefinite in states having the cabinet form of government, in which the legislature may be dissolved by a defeated cabinet and a new election demanded. Short terms, however, have the serious disadvantages of the expense and disturbing influences of frequent elections, of interfering with the legislative duties of representatives because of the effort needed to secure reëlection, and of a constant shifting in the membership of the legislative body, a large part of which will be made up of new and inexperienced members.

3. *Qualifications of representatives.* Many states require a slightly higher age qualification for representatives than for voters, believing that a certain maturity and experience are desirable for the successful discharge of legislative duties. Members of the clergy are debarred from service in the legislative bodies in some countries because of the fear of church influence. Some states, such as the United States, forbid

[1] See above, Chap. XVI, pp. 265-270.

members of the legislature to hold other public office ; in others, such as Great Britain, the heads of the departments of administration are not only members but the actual leaders of the legislative body.

In some states property qualifications for representatives are still retained. This requirement, formerly common, disappeared in most states with the growth of the democratic movement. Where it survives it is supported by the argument that ownership of property is an evidence of intelligence, business ability, and thrift, and consequently of legislative fitness. It is also supported on the ground that men of property are likely to have more time for devotion to the public service than those who must earn their livelihood. This argument is especially applicable in countries where members of the legislature are unpaid or are paid only nominal salaries. In such states the possession of property is an implied qualification, even if not a legal requirement. The growth of Socialist and Labour parties, demanding representation in the national legislatures for their members, few of whom could serve without pay, has led to the adoption of the principle that members should receive pay from the public treasury.

4. *Basis of representation.* Representatives are usually apportioned according to the principle that each member shall represent approximately the same number of persons as every other member. To this principle there have been some objections, and in practice a few states make certain exceptions. In some cases representatives are apportioned on the basis of the number of citizens, the alien population not being counted ; in others, representation is based upon the number of voters, or upon the number of votes cast in the preceding election, rather than upon the total population. The theory that representatives should be apportioned equally according to population is also modified to some extent by the practice of giving at least one representative to certain local subdivisions of the state regardless of their population. In France and in the American commonwealths this results in considerable inequality of representation, and discriminates in favor of the rural areas as against the large cities. In order that representation according to population may be maintained, it is necessary that a census

of the population be taken at reasonably frequent intervals and that a reapportionment of representatives be made on the basis of the new census. If this is not done, the sections of the country that grow more rapidly, especially the cities, will be decidedly underrepresented. This was the case in the German *Reichstag* before the formation of the republic after the First World War, and in the United States, where no redistribution of the members of the House of Representatives was made between 1910 and 1930.

5 *Territorial areas of representation.* For the purpose of selecting representatives, all states divide their territory into districts from which the members of the legislature are selected This is done partly for convenience, partly to insure a close relationship between the representative and the voters, and partly to give greater representation to minority groups or parties than would be secured if the entire legislature were chosen from the country at large on a general ticket. Sometimes the state is divided into as many districts as there are representatives to be chosen, and one representative is elected from each district. Sometimes the state is divided into a smaller number of districts, each selecting several representatives on a general ticket. Both systems have been tried by modern states, but the single-member district is generally favored It has been criticized, however, on the grounds that it narrows the range of choice and results in the selection of inferior men from some districts, that it leads representatives to think in terms of local interests rather than of the welfare of the country as a whole, and that it increases the opportunity for the majority to "gerrymander", that is, so to divide the state as to get more than their proportionate number of members, or to create districts of unequal population. The recent growth of the system of proportional representation[1] has given an impetus to the creation of districts from which several representatives are selected. The theory that representation should be based on occupational groups[2] attacks the fundamental basis of the territorial-district system.

[1] See above, Chap. XVI, pp. 278-279.
[2] See above, Chap. XVIII. pp. 317-318.

6. *Residence in district.* The residence of the representative in the district from which he is elected is required by law or by custom in many states. This principle is supported on grounds that it enables the voters to have better knowledge of the representatives that they choose and that it makes more likely an interest on the part of the representative in the needs and conditions of his district. In Great Britain and in most of the countries of continental Europe, nonresidents are frequently elected. This practice is upheld by the argument that it enables districts in which no outstanding man resides to select able men from outside their area. It is also believed that men thus chosen are more likely to take broad national views on public questions and to be free from the influence of local politics. If a representative can secure a seat in the legislature only if elected by the voters of the district in which he resides, fluctuations of local opinion may cause his defeat and may deprive the country of the services of an able statesman or of a party leader.

7. *Majority and plurality elections.* In states such as the United States and Great Britain, where the two-party system normally prevails, a plurality is sufficient for the election of representatives. Whichever candidate receives the largest number of votes is elected, the first election being decisive except in the rare cases when a tie results. In the states of continental Europe, where there are many parties, a majority vote is usually required ; and if no candidate receives a majority in the first election, a second election is held between the two candidates receiving the highest votes on the first ballot.

Organization and Procedure of Legislatures. Legislative bodies usually determine their own internal organization and procedure, though in some cases this is partially provided for in the constitution. For example, presiding officers are usually elected by the houses ; but according to the constitution of the United States the vice president presides over the Senate, and in the British House of Lords the Lord Chancellor, a member of the ministry and sometimes a commoner, presides. The size of modern legislative bodies and the volume of business with which they must deal necessitate some division of labor. This is secured by means of a system of committees,

which reject a large part of proposed legislation and shape the remainder for final consideration by the legislative body as a whole. In the United States, where the committee system has been most highly developed, the houses choose their own committees. In states having the cabinet form of government the real committee is the cabinet, which shapes all legislation of importance, leaving only minor and private bills to other committees.

Legislative bodies usually assemble annually, but they vary in the methods used to determine the length of the session, to bring the session to an end, and to call special sessions. All legislative bodies find it necessary to draw up certain rules of procedure. The purpose of these rules is to prevent undue haste or ill-considered action and at the same time to prevent too great delay or confusion. To accomplish these ends, while making it possible for the majority to secure its will, methods of procedure are necessary whose intricacy of detail and formality often seem cumbrous and needlessly complicated. Among the most important rules are those concerned with the *quorum*, or number of members whose presence is necessary to legalize legislative action, the order of business, the counting of votes, and the procedure in debate. Most legislatures allow means by which a vote may be taken on the question of closing discussion and deciding the matter at issue. In some states, especially those having the presidential form of government, a certain influence over legislation is given to the executive. This usually takes the form of an executive veto, which may compel the legislature to reconsider a bill or to pass it by an increased majority.

Functions of Legislatures. The functions of legislatures, with due allowance for differences in detail and in scope of authority, may be classified as follows :

1. They formulate the statute law of the land, removing obsolete provisions and adapting legislation to the changing conditions of modern life.

2. In many states they possess the power wholly or in part to amend the constitution of the state, thus sharing in the creation of constitutional law.

3. They control the finances of the state, determining the methods of raising money, the amount to be raised, and the purpose of its expenditure.

4. They are gradually extending their control over the international relations of the state and, by means of their power over the ministry or over finances or over treaties, act as a check on this, the most important surviving field of executive authority.

5. They exercise many powers not purely legislative. In deciding contested elections, trying their own members, or impeaching other officials, they exercise judicial powers. In some states one of the legislative chambers acts as a supreme court of appeals. In appointing or sharing in the appointment of officials, regulating minor executive offices, creating commissions, and passing private legislation, they enter largely into administration, and act as a board of directors for the great governmental corporation.

Systems of Formulating Legislation. In the formulation of legislative policy three main systems have been used :

1. The will of a powerful ruler, expressed directly or through his ministers, may be practically forced on the legislature, whose province in important legislation may be limited to acceptance or feeble protest. This was the situation when legislative assemblies were first arising : it existed until recently in Germany and Austria and in the futile attempts at a representative legislature in Russia under the Czar. It existed for a long time in Japan and was revived in modern dictatorships.

2. The will of the legislature may be supreme, and little or no power of resistance be left to the executive This is the case in Great Britain, France, and other states that have the cabinet form of government. In this system the heads of administration are also leading members of the majority party in the legislature, and harmonious action is assured. The policy of the state is actually determined by the more popular branch of the legislative assembly.

3. A balancing of authority between the houses and between the legislature and the executive may exist. In this case political parties, through caucuses guided by the

leading members of each house and by members of the administration, determine legislative policy. If the executive and both houses are in harmony, consistent and active legislation is easy to secure ; if not, legislation either is prevented or is secured only after a series of compromises. This is the case in the United States.

At the present time the former confidence in legislative bodies is somewhat declining. On the one hand, commissions of experts are being created to deal with problems requiring more specific knowledge than a large body of elected representatives is likely to possess ; on the other, the electorate, through initiative, referendum, and special conventions for the creation of constitutions, is extending its authority over the field of legislation. Side by side with these processes goes an extension of the sphere into which legislation is entering, the complex life of modern society demanding wider collective activity and more detailed regulation.

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CHAPTER XIX

THE EXECUTIVE

OUTLINE

Nature of the Executive Department
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3. The cabinet
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The Executive Head
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Conclusion

Nature of the Executive Department. In its broadest sense the executive department consists of all governmental officials except those acting in a legislative or judicial capacity. It includes all the agencies of government that are concerned with the execution of the state's will as expressed in terms of law. As thus considered it includes

1. *The executive head*, whose accession, tenure, powers, and relation to other departments differ in different states.

2. *The executive council*, more or less distinct from the law-making body that has absorbed many of its powers.

3. *The cabinet*, or heads of great departments of administration, forming more or less of a unit, and standing, in different

states, in widely divergent relations to the executive head and to the legislature.

4. *The civil service*, or the numerous subordinate officials in the administrative departments, including the military and police forces of the state. Their selection, tenure, and organization form one of the leading problems of modern politics.

Numerically, the executive branch of the government far outnumbers all the others combined. Those who hold that the functions of the state are twofold, to create law and to administer law,[1] would include the judiciary, when applying the law, as a part of the executive department. Some writers[2] make a distinction between the executive and the administrative branches of government, viewing the former as a political organ with considerable discretionary powers, whose duty it is to see that the laws are enforced, and to represent the state in its international and military relations ; and the latter as a nonpolitical organization, without discretionary powers, which is engaged in the detailed duties of actually putting the policies of government into operation. In ordinary usage the executive department includes the chief magistrate of the state and his ministers, advisers, and department heads. It represents the original organization of the state, in the form of a chief and council ; but its ancient powers, once enormous, have been considerably reduced in modern states by the transfer of powers to the judiciary, the lawmaking body, and the electorate.

The executive function is essentially different from the legislative ; hence the executive department requires a different form of organization from that of the legislature. The latter body is concerned with deliberation, discussion, the balancing of numerous interests, and the formulation of general policies. It requires a fairly numerous body chosen at frequent intervals by the entire voting population. The executive, however, is concerned with the execution of the policies and the enforcement of the laws that are made by the legislature and upheld by the courts. Efficiency in administra-

[1] See above, Chap. XIII, p. 212.

[2] W. F. Willoughby, *Government of Modern States*, Chaps. XIV, XVI.

tive functions requires prompt and energetic decision and action, consistent policy, and even secrecy in procedure. The advantages of numbers in legislation, where caution and compromise are essential, become dangers when energetic action is needed, especially in crises. For this reason executive power should be concentrated in a single person or a small number of persons. Centralized responsibility and unity of organization are needed, and political experience tends to favour a single-headed executive.

States in the past have tried the experiment of a plural executive. Ancient Sparta had two kings, and in Athens the executive power was divided among a number of officials. Republican Rome had two consuls, and in France after the Revolution a Directory of five persons for a time wielded that executive power. At the present time the Swiss republic, where the executive power is vested in a council of seven persons, and Russia, where some executive power is vested in councils of commissars, are the only states with plural executives. In a sense the cabinet form of government vests the executive power in a body of ministers, but the preëminence of the prime minister prevents this system from being a plural type of executive. In local governments plural executives are frequently used, the commission form of city government being a conspicuous example. It has been argued in favor of the plural executive that a group of men are likely to possess more wisdom and to exercise better judgment and discretion in forming policies of direction than a single individual. It is also held that a plural executive is a guaranty against the dangers of oppression and abuse of power that may result when all executive power is concentrated in a single head. Experience has shown that the plural form of executive is usually unsatisfactory, resulting in feeble authority, divided responsibility, and dissension among its members. Modern political opinion is almost unanimous in favor of unity in the organization of the executive office.

The Executive Head. In the beginnings of political organization authority was centered in a group of men, among whom, because of age or wisdom or personal prowess, a leader arose. This position might be attained by birth, by popular choice,

or by force, and was usually supported by the idea of divine right. The natural desire to perpetuate power in the same family, aided by the close organization of the patriarchal group, led often to hereditary rule. Thus an autocratic monarch, supported by divine sanction and surrounded by a group of advisers that formed a hereditary nobility and priesthood, was the usual organization under which the early states emerged. While in theory the power of such a ruler was absolute, in reality his actions were limited by custom, religion, and ceremony, and by the influences and intrigues that permeated his court. The development of monarchy was characterized by the placing of numerous checks on the autocratic powers of the ruler and by a transfer of many of his functions to other organs; at the same time his authority was made more definite and unhindered in such powers as he retained.

In recent years the hereditary type of ruler has been replaced in many states by a nonhereditary executive head or president chosen by some form of election. At present all types of executive headship may be observed. Some native peoples are still governed by tribal chiefs. Autocratic monarchy supported by divine sanction was found in Japan. Hereditary monarchy limited by constitutions, parliaments, and cabinets survives in a number of states, the actual power of the monarch ranging from that of an important organ of government to that of a nominal and ceremonial head of the state. The powers of elected presidents also show wide variations. In some Latin-American states the president is virtually a dictator; in the United States he is a powerful and independent executive; in France he has but a few nominal powers; and in Switzerland he is merely the chairman of an executive commission.

In classifying the executive heads of modern states, three questions are of chief importance: the method of selection, the tenure of office, and the actual powers exercised.

1. *Method of selection.* Four methods are used at present in choosing executive heads: the principles of heredity, direct popular election, indirect election by a body of electors chosen for that purpose, and election by the legislature. Until the

rise of modern democracies, the hereditary principle was generally followed in the selection of rulers. The laws of succession showed certain variations, the most important difference being between those states which permitted succession through the female line and allowed women to rule and those in which succession passed through the male line only. In modern democratic states the existence of a hereditary monarch is rather the result of the historical evolution of the state than of deliberate choice. It implies "the existence of a royal house whose foundation reaches far back of the revolution which changed the state from its monarchic or aristocratic to its democratic form. It implies that that house has accommodated itself to the spirit of the revolution—has, in fact, placed itself at the head of the revolution and brought it to its consummation ; has retained its hold upon the people ; has kept and still keeps attached to itself the most capable personalities of the state, the natural leaders of the people ; is content to surrender sovereignty and retain a limited governmental power only, and, in the exercise of this power, follows always a liberal and popular policy."[1]

While the hereditary principle is a survival of a past age and is disappearing in the modern world, it has at its best certain advantages, especially in countries that have not reached an advanced stage of political development. It contributes a certain prestige in international dealings, and by its permanence and traditions tends to create a sense of responsibility and dignity in the heads of the government and to maintain a stable and efficient civil service. The great objection to the system of selection by hereditary descent is the uncertainty as to whether the person secured in this way will be competent.

The selection of the executive head by direct popular vote is used, at least in theory, in some of the Latin-American states and was adopted in the constitution of the former German Republic. It is frequently employed in selecting the chief magistrates of the territorial divisions of modern states. The governors of the states are chosen by this method in the United States, and the American president, while in theory elected indirectly, is in fact elected by popular vote, though

[1] J. W. Burgess, *Political Science and Constitutional Law*, Vol. II, p. 308.

the vote is counted on the basis of the electoral system, as apportioned among the states. Those who favor direct election argue that it stimulates the interest of the people in political affairs and affords a means of political education, that it tends to secure an executive head in whom the people have confidence and to impose upon him a sense of public responsibility, and that it corresponds with modern ideas of democracy. The opponents of direct election believe that the masses are incompetent to make a wise selection of an executive head, that they are likely to be influenced by demagogues or by campaign methods which are confusing rather than enlightening, that it tends to overemphasize the importance of political parties, and that it makes the periodic elections for so important an office times of disturbance and political demoralization. Some believe that a chief executive chosen by direct election is likely to assume dictatorial powers because he feels that he has popular support behind him.[1] Others believe that popular choice is likely to select inconspicuous men of mediocre ability rather than national leaders because democracy is suspicious of men of outstanding ability and because the methods of partisan politics do not attract able men to political careers.

Executive heads are chosen by indirect election in Argentina, Finland, and the United States, although in the latter the actual process is practically direct election. Under this system the voters are expected to choose a small body of capable and intelligent men who will possess the information and judgment necessary to select the chief executive. It was also believed that this method of choice would avoid the evils of popular excitement and tumult and of partisan bitterness which would accompany direct election. If the electors are distributed on a territorial basis they also to some extent prevent concentration of power in the thickly settled portions of a country which contain a numerical majority of the entire electorate.

[1] The way in which Napoleon III converted the French Republic into an empire discredited the system of popular election of the executive head in France; and the Social Democrats in Germany opposed the system of direct election when the present German constitution was drawn up, on the ground that a president chosen by the people would be likely to be a military hero who would assume the powers of a dictator.

The system of apportioning electors in the United States to correspond with the number of senators and representatives from each state gives proportionately greater influence to the states with small populations. The defect in this system is that, where political parties are strong and well organized, the electors tend to become mere figureheads chosen under party pledges to vote for the candidate of their party rather than to register their independent judgment. This development, which soon occurred in the United States, destroyed most of the advantages that were expected from the indirect method of choice.

The executive head is chosen by the legislature in a number of states, including France, Austria, Poland, and Czechoslovakia. The executive council of Switzerland also is chosen by the legislature. It is legal theory in Great Britain that the monarch is elective by Parliament. In states with the cabinet form of government the prime minister, who is the actual executive, though not the nominal head of the state, is virtually chosen by the legislature, since he is the leader of the majority group or a coalition of groups in that body. The advantage claimed for this method of choice is essentially similar to that of indirect election; that is, selection by a picked group of men who are presumed to be of superior intelligence and political experience. Besides, if the executive is selected by the body whose laws he is expected to administer, a greater degree of coöperation and harmony between the legislative and executive branches of government may be expected than might obtain otherwise. In opposition to this method of choice it is urged that it destroys the independence of the executive and tends to make him subservient to the legislature, or else that it tempts ambitious candidates to use corrupt methods, bargains, and promises of patronage to secure the votes of the legislature. Besides, it imposes upon the legislature a political function alien to its primary function of making laws, distracts its attention from its real duties, and may even lead to the selection of legislators primarily from the point of view of their attitude toward the candidates for executive office. Selection of the executive by the legislature violates the principle of separation of powers,

which requires that these departments be independent ; and it was for that reason that the system was not adopted in the United States.

2. *Tenure of office.* Opinion differs as to the proper length of term for elected executives. In practice modern states show variations between two and seven years. Those who favor long terms argue that it secures the advantages of executive independence, of stability and consistency of policy, and experience. It also avoids too frequent recurrence of the disturbances and distractions that accompany elections. In favor of short terms it is argued that the executive will thereby be kept responsible to public opinion and will have less temptation and opportunity to abuse his power. In some states, as in the United States, the chief executive may be reëlected indefinitely ; in others, as in Mexico, he is ineligible to reëlection after a single term ; formerly in Austria, he might serve two terms, after which he became ineligible ; in still others, as in Brazil, he may be reëlected after the lapse of an intervening term. In some states, where the executive is legally eligible to reëlection, custom has fixed a definite tenure. Thus the tradition of a single term has been established in France and that of two terms in the United States. The argument in favor of reelection is essentially the same as that in favor of long terms : the value of experience, stability, and consistency of policy. In opposition to the reeligibility of the executive, the danger of personal ambition and of using the office to secure reëlection to the neglect of more important duties has often been pointed out. The dangers of reëligibility depend to some extent upon the length of term and upon the actual powers exercised by the executive head. Usually some method is provided for removing elected executives, by impeachment or by reçall, and some provision is made for succession to the office or for a new election in case of death or removal.

3. *Actual powers.* The distinction between nominal and actual executive heads depends largely upon the relation of the executive to the legislature. The two great types of government, cabinet and presidential, into which modern states

may be classified have already been discussed.[1] In the former the executive head is a nominal ruler, the real executive being the cabinet. a group of men whose tenure of office is dependent upon the support of the legislature. In the latter the tenure of the executive head is independent of legislative approval of his policies, and he exercises extensive powers independently. It must be remembered that the distinction between hereditary and elected executives and between nominal and actual executives is a cross classification. The hereditary British king and the elected French president are nominal executives, both states having cabinets that are responsible to their legislatures and that exercise the real powers of administration. On the other hand, the elected president of the United States is an actual executive, exercising large and independent powers, especially in foreign affairs. In most cases, however, a hereditary monarch, except in those states whose government is still despotic, is a nominal ruler, though often exercising considerable influence because of the traditional respect for the royal office or because of his personal ability.

Executive Councils. The development of the executive branch of government has usually been marked by the rise of some form of council, which, at first serving in an advisory capacity, often secured considerable control over the actions of the executive head and exercised important administrative functions in its own right. The more recent formation of representative legislative bodies has somewhat diminished the importance of such councils, often, in fact, partially absorbing their organization as well as their functions. Even in these cases important survivals of their administrative, as distinguished from their legislative, powers may be traced. The association of an advisory council with the executive head has certain advantages. The complex work of administration often requires expert and technical knowledge, which can be furnished by competent advisers ; and the decisions of the executive may be strengthened by the support of wise counsel. The final decision and responsibility, however, should rest with the executive head, since the unity of executive power is

[1] See Chapter XIII, pp. 216-223.

impaired if the council actually controls the chief executive or if responsibility is divided between them. A brief survey of executive councils in several leading modern states follows :

While the British Parliament, through its control of finance, was developing legislative powers, a council, growing out of the old *Curia Regis*, was aiding the Crown in its administrative and judicial duties. This body, to which the name Privy Council was later applied, grew under weak kings until it exercised wide legislative, judicial, and administrative functions. At present the Privy Council consists of more than three hundred members appointed by the Crown and holding office for life. It includes several ecclesiastical officials, the most important judges and retired judges, many eminent peers, especially those who have held high administrative posts at home and abroad, a few colonial statesmen. and certain men of distinction in literature, art, science, law, and other fields, upon whom membership has been conferred as a mark of honor. The main method of recruitment, however, is the appointment as privy councilors of all the members of each successive cabinet. The main body of its membership, therefore, consists of present and past cabinet officers. Since the prime minister selects his colleagues in the cabinet, it is really he who confers upon them membership in the Privy Council. The Privy Council has lost most of its judicial powers, though it still acts as a court of appeal for the colonies ; its administrative duties are now largely exercised by a small group of its members known as the cabinet. It still retains its power of advising the Crown in issuing ordinances, known accordingly as "orders in council" ; its approval is necessary for the validity of ordinances issued by local authorities, and its members alone have the legal right to advise the Crown. Accordingly, the powerful cabinet, the real executive in Great Britain, has no legal existence and can exercise no legal powers execept as a part of the Privy Council. Several administrative and judicial boards, now more or less independent, have had their origin in this body.

The executive council in France has had a brilliant history. During the period of absolute monarchy it was almost the only guaranty of good government, and under the empires it

exercised large legislative powers and accomplished an enormous amount of work. When legislative bodies were established in the republic, the council was limited to advisory executive duties and to certain important judicial functions. The Council of State was, on the one hand, a political council which served as an advisory body to the national ministry on a number of questions of a political nature. While the government was not bound by its advice, many questions were referred to it which were valuable as offering precedents for future action. Its more important function, on the other hand, was its judicial work as the supreme administrative court. This function was performed by a group of members of high judicial standing, quite distinct from the ministerial advisory group. It could annul acts of administrative officials that exceeded their legal powers or that were performed for purposes not intended by law, and could grant relief to persons injured by acts of government officials. It could also annul administrative ordinances and acts of local bodies that exceeded their legal powers As a court the Council of State stood high in the esteem and confidence of the people. The Council of State was abolished by the Constitution of 1946.

In contrast to the executive councils of Great Britain and France, which are organized as a part of the administrative system and which have little direct share in legislation, the executive councils of the German Empire and in the United States acted as the upper houses of the lawmaking body, and were more important as legislative than as administrative organs. In the German Empire the Federal Council (*Bundesrat*), in addition to being the more powerful house in the legislature, shared with the emperor executive powers so important that in many ways it was the real executive. In the former German Republic the *Reichsrat*, which replaced the former *Bundesrat*, was less important in both legislation and administration. As an executive council it participated in important appointments, received reports from the ministry, and was consulted by it on important matters. Its approval was necessary also to certain ordinances issued by the cabinet.

In the American colonies the upper house of the colonial assembly was a council whose consent was necessary for the

validity of certain of the governor's acts, and in the early state constitutions the executive was usually subjected to the control of a council. This policy was the result of the fear of executive power and the belief that authority was safer if distributed among a number of persons. Some of the New England states retain a governor's council whose consent is necessary for the governor's appointments. When the Constitution of the United States was framed, an effort was made to set up an executive council to check the powers of the president, but this plan was finally rejected. The Senate, however, acting as an executive council separate from the House, has the right to annul certain acts of the president. Its consent is necessary for some of the most important appointments, and its approval, by a two-thirds vote, is necessary in order to give validity to treaties.

Heads of Departments. As the functions exercised by the state expanded and became more complex, the administration differentiated into distinct branches. Among these were foreign, military, legal, financial, and internal affairs. Other branches were added later or were formed by subdividing the existing departments. These included divisions for the navy, for colonies, agriculture, commerce, labor, education, and the like. At present all states have numerous departments, each devoting itself to some particular administrative activity ; and it has come to be a recognized political principle that each of these fundamental departments of administration should be under the authority of a single head. In addition to their political position as leaders in formulating the policy of government and as advisers of the executive head and as agents for the discharge of his duties, these officials usually have large powers of appointment and supervision over subordinate officials and exercise a delegated ordinance power, filling out by general orders the details of administrative law. Such heads of departments, often called ministers, as a body form the cabinet. Their relation to the executive head and to the legislature, and the nature of their functions, may be best viewed by a brief summary of the nature of the cabinet in several leading modern states.

In Great Britain the cabinet has had a gradual development

and even now rests on custom rather than on law. The king's ministers were at first his chosen advisers, often hostile to the growing powers of Parliament, whose only control over them was that of impeachment. As the king's advisers, or Privy Council. as they were called, increased in numbers, a smaller group, or "cabinet," took over the most important duties. When Parliament was recognized as supreme, the king, to secure its support, usually chose his ministers from its majority party. At first these men did not act as a body, neither did they resign if their policies were defeated in Parliament ; both these principles have developed since the middle of the eighteenth century. At present the British cabinet consists of from fifteen to twenty members appointed by the Crown on the nomination of one of their number, who is first chosen prime minister. The prime minister is the leader of the party in power in the House of Commons, and usually holds the office of First Lord of the Treasury, partly because its nominal duties give him opportunity to devote himself to questions of general policy, and partly because of its extensive powers of appointment. The members of the cabinet, usually all of the same party as the prime minister,[1] are in most cases also members of Parliament, where they take an active part ; at the same time they serve as heads of the most important departments of administration. They determine their policy is secret session and act as a unit. If defeated in the House of Commons, they resign collectively ; or, if they believe that their policy is supported by the people, they require the Crown to dissolve Parliament and stake their tenure on the outcome of the following election. The prime minister is therefore the actual executive head in Great Britain. He directs the other heads of departments and, in turn, is dependent upon the legislature, because of the necessity of maintaining a favorable majority in the House of Commons.

In France the president nominally appoints and dismisses the ministers. Actually, the ministers are controlled by the legislature, especially by the lower house, or National Assembly, to which they are collectively responsible for the general policy of administration and individually responsible for their

[1] Great Britain has had several coalition cabinets during recent years.

own personal acts. Since there are many parties in France, the cabinet usually represents a coalition, and cabinet changes are frequent. The ministers exercise supervision over the administration of the laws and give unity to the affairs of state, and every act of the president must be countersigned by the minister of the department concerned. The ministers are usually members of the legislature and have the right to speak before it whenever they desire. When the support of the National Assembly is lost, the ministers resign ; and any individual minister may be forced out of office if a vote is taken expressing lack of confidence. This is frequently done after an *interpellation,* by which the minister is compelled to answer, before the Assembly, questions concerning the policy of his department. Accordingly, the chief of the council of ministers, a statesman who commands the confidence of the National Assembly, and who is usually minister of the interior or of foreign affairs, is the real head of administration. On his recommendation the other ministers are appointed, and he can force them out of office if dissatisfied with their actions. The position of the French president is therefore very difficult. Elected by the legislature for a fixed term, he has apparently large powers ; but the fact that all his acts must be approved by ministers responsible not to him but to a legislative body often controlled by parties hostile to the president makes his authority nominal.

In the former German Empire the chancellor, appointed by the emperor and responsible to him alone, was the head of the administration, and all other ministers were his subordinates. In the German Republic the working executive was a group of ministers, appointed by the president on the nomination of the prime minister, or national chancellor, whom the president selected, but responsible to the national assembly (*Reichstag*) for all the acts of the government. Like Great Britain and France, Germany had adopted the cabinet system of government, although leaving to the president considerable influence on the course of political affairs. While in the former countries the maintenance of harmonious relations between ministers and legislative majority is largely a matter of custom, in Germany the constitution provided that the national chan-

cellor and the national ministers required for the administration of their offices the confidence of the national assembly; each of them must resign if the national assembly by formal resolution withdrew its confidence. The German constitution also recognized the cabinet as a definite organ of government, and conferred certain specific duties and powers upon it. Ministers did not need to be members of the legislative body, but they could be present at its meetings, could take part in its proceedings, and could introduce bills.

In the United States the president, with the approval of the Senate, appoints and, on his own initiative, removes the heads of departments, whose responsibility is therefore merged in that of the president. They have no collegiate existence as a cabinet under the Constitution, and even in administering their departments are subordinate to the president. The president is not obliged to take their advice, and the resignation or removal of one member does not necessarily affect the others. Accordingly, the president is the only bond uniting the executive departments. What is called the cabinet is a voluntary association of the heads of departments, whose opinions the president may require but need not accept, and whose tenure is dependent upon his will. By law the heads of departments are not allowed to hold seats in Congress, and by custom they are not permitted to speak before it, though they frequently appear before congressional committees to give information and to answer questions. In recent years many political thinkers have urged a closer connection between cabinet and Congress, some urging that heads of departments be given seats in Congress; others, that they be allowed to appear and speak before it; others, that bills introduced by them be given preferential treatment.[1] The legislature, except in last resort by impeachment, exercises no control over their tenure of office; although, by detailed statutory provisions prescribing their fundamental activities and by the control of appropriations, it exercises considerable influence over their functions.

[1] See F. E. Leupp, "The Cabinet in Congress," in *Atlantic Monthly*, December, 1917; W. C. Redfield, "Cabinet Members on the Floor of Congress," in *World's Work*, May, 1920.

The Civil Service. In its broadest sense the executive department includes the general body of officials serving under the heads of the various administrative departments and known collectively as the civil service. These are distinguished on the one hand from legislative and judicial officers, and on the other from members of the army and navy, who are under special military and naval organization and rule. The heads of the more important subdivisions of administration may have some discretionary powers, but the great mass of minor officials and clerical employees perform their duties under definite directions.

Subordinate administrative officials are usually chosen by election or by appointment. If chosen by election, as is the case to a considerable extent in the commonwealths of the United States, they are not directly responsible to any superior official, and there is likely to be little coördination or supervision in the work of administration. Besides, if elected for short terms, the personnel is likely to change frequently, and the whole system is drawn into the arena of party politics. If appointed without restriction by superior officials, there is danger that the civil service may be used as a means of rewarding political followers, for the purpose of creating a political machine, and with the resultant evils of the spoils system. In most states administrative officials form more or less of a hierarchy, subordinates being definitely responsible to their superiors; and tenure, except for heads of departments, is fairly permanent, not being affected by changes in government caused by the rise or fall of administration. In carrying on administration in local areas two general systems are in use. Sometimes the administration is highly centralized, with the local agents responsible to central officials; sometimes the system is decentralized, with local officials chosen by local authority and with little central supervision or control.

The ministers or heads of departments who frame the general policies of administration or who carry out policies set by the legislature can at best give only a general oversight to their task. They are dependent upon the numerous minor officials in the civil service for information and for the detailed work of carrying out the law. The efficiency of government

depends to a large degree upon the competence of this group. The permanent officials of the civil service should be neutral in politics, serving whole-heartedly whatever party is in power. Neither popular election nor appointment as a reward for political service is likely to prove a satisfactory method of selection. The best solution seems to be appointment as a result of competitive tests by a nonpartisan commission, with assured permanence of tenure, promotion based on ability, and retirement at an age sufficiently early to keep important officials in touch with new ideas. The chief dangers of the civil service are rigidity of routine and the growth of a bureaucratic spirit. Government officials frequently mistake red tape for efficiency and fear experiment and initiative. A device that has been found useful to keep the civil service in touch with public opinion has been the creation of advisory committees, representing the interests affected, to consult and coöperate with department chiefs. In this process the officials become informed concerning public needs and desires, and the public becomes educated concerning some of the practical difficulties of government.

Functions of the Executive. A distinction is often made between the political and the administrative functions of the executive. The former includes the relation of the executive to the other departments of government and its determination of questions of general policy, both external and internal. The latter includes the mass of business details which modern government demands in carrying out its policies. For this purpose the executive organizes its departments, selects its officials, and directs and supervises their work. A more detailed classification of executive functions, especially those performed by the executive heads, is as follows:

1. *Diplomatic*. The diplomatic function relates to the conduct of foreign relations, and includes the right to conclude treaties and other international agreements with foreign states, to appoint diplomatic representatives to foreign states, to receive those accredited to him by foreign states, and to act as representative of his state in its relations with other states. The power to receive foreign representatives is generally held to include the power to recognize

or refuse to recognize the independence of the state or legitimacy of the government sending the representative. In most states the assent of the legislature or of one of its houses is required for the validity of treaties or of certain classes of treaties. While the legislature, because of its numbers and fluctuating composition, is not suited to the negotiation of treaties, which requires certain secrecy, promptness of decision, and consistency of national policy, yet in modern democracies it is felt that the representatives of the people should possess a negative check in case the executive should be unwise or unscrupulous. Switzerland goes even further in providing for a popular referendum on all treaties of more than fifteen years' duration.

2. *Military.* The executive head is usually commander in chief of the military forces of the state. As such he appoints and dismisses officers, disposes of the armed forces of the state, and directs campaigns. While the actual declaration of war usually requires the consent of the legislature, and successful prosecution of war depends upon the support of the legislature because of its control over finances, nevertheless the executive, through its control over foreign relations, may bring about a condition of affairs that makes war inevitable. In time of war the executive exercises greatly increased powers, in many states becoming a virtual dictator. He may suspend the ordinary constitutional rights of citizens, establish martial law, and vastly expand the authority of government on the grounds of military necessity. Most political thinkers agree that the military power, more than any other, should be concentrated in a single executive head.

3. *Administrative.* As head of the internal administration of the state, the executive directs and supervises the execution of the laws. For this purpose he possesses the power to appoint, remove, and supervise subordinate administrative officials, although this power is checked in some states by the requirement that appointments shall be approved by one house of the legislature and by the selection of many minor administrative officials by competitive tests, or by popular election. In administering the laws, the executive frequently issues ordinances for the purpose of supplementing or filling in the

details of general laws or of laying down rules for the conduct of administrative services. This is done in the form of decrees, orders, proclamations, and regulations issued by the executive head, and by rules and instructions issued by various departments, bureaus, and commissions. In some states the executive is given an extraordinary power to issue ordinances in time of emergency.

4. *Legislative.* In states with the cabinet form of government, the executive heads share directly in legislation as members of the lawmaking body, guiding and directing its policy as long as they possess its support. Even in states with the presidential form of government, where an effort is made to separate executive and legislative functions, the executive participates to some extent in the work of lawmaking. The executive usually has some control over the assembling adjourning, or dissolving of the legislature or the holding of special sessions. He initiates legislation, directly or indirectly, by furnishing the legislature with information concerning the needs of the country and recommending measures for its consideration. In many states the executive head may disapprove the acts of the legislature by means of a veto. Usually the executive veto may be overridden by an extraordinary majority of the legislature. In France the veto is merely suspensive, and requires reconsideration of the matter by the legislature, repassage of the vetoed measure by ordinary majority making it a valid law. In the German Republic a law not approved by the president might be submitted to popular referendum. The veto power of the executive is upheld on the ground that it enables the executive to point out defects in legislation and demand their reconsideration, that it prevents hasty and ill-considered actions, and that it enables the executive to protect itself against legislative encroachment upon its constitutional powers. In some cases, especially in the United States, the legislature deliberately shifts the burden of opposing undesirable measures which are supported by public clamor by passing them, in the expectation that they will be vetoed by the executive.

5. *Judicial.* The power of reprieving or pardoning criminals and of granting amnesty to persons who have taken

part in revolutionary movements is usually regarded as properly belonging to the executive. It provides a means of correcting errors in the administration of justice because of the rigidity of the criminal law, enables review of cases where new evidence is discovered, and makes possible a consideration of extenuating circumstances to which the law cannot give cognizance. In some cases, persons convicted of certain crimes, such as treason, or persons convicted by impeachment may not be pardoned. Sometimes the power of the executive to pardon is unrestricted ; sometimes it requires the approval of a court or an advisory board. While the power to pardon is required by considerations of humanity, it is liable to abuse in the hands of weak and unscrupulous executives, and may seriously interfere with the proper administration of justice.

Conclusion. "As freedom has been won be resistance to arbitrary monarchs, the executive power was long deemed dangerous to freedom, watched with suspicion, and hemmed in by legal restraints, but when the power of the people had been established by long usage, these suspicions vanished."[1] The confidence of a century ago in representative legislative bodies has markedly declined, and the weakness and incompetence of parliamentary government have been seriously criticized in recent years. The demand for vigor and efficiency in government has given an impetus to the expansion of executive power which is noticeable in many modern states. Side by side with the disappearance of the hereditary monarch has developed a strong executive in the form of president, prime minister, or dictator, supported by general consent or by an organized party group. It seems likely that the immediate future of political development will be marked by a further expansion of the powers of the executive and administrative branches of government.

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CHAPTER XX

THE JUDICIARY

OUTLINE

Evolution of the Judiciary
1. As to its organization
2. As to the status of individuals before the law
3. As to procedure and punishment

Functions of the Judiciary
Organization of the Judiciary
Selection and Tenure of Judges
Relation of Judiciary to Executive
1. Executive control over the judiciary
2. Judicial control over the executive

Relation of Judiciary to Legislature
1. Legislative control over the judiciary
2. Judicial control over legislation

Evolution of the Judiciary. The development of the judicial department may be traced along several related, yet fairly distinct, channels.

1. *As to its organization.* The administration of justice, which is universally regarded today as a state function, was originally a private matter, the state having no machinery for its administration. In the primitive state, disputes and breaches of custom were settled by compromise or by individual or family retaliation and vengeance. In case of private offenses a blood feud resulted, later taking the milder form of a money payment for injuries inflicted. For more serious offenses, or "bootless" crimes, for which money could not atone, the offender was driven out from the community and made an outlaw. The state, entering as the arbiter of custom, later became the creator of law, the adjudicator of disputes, and the prosecutor and punisher of offenders. The political authority compelled payment for private injuries, and viewed serious offenses involving violence or disorder as violations of

the "king's peace," or offenses against the state, whose duty it was to maintain order and to punish crime. As royal power increased, the judicial functions exercised by the community, by the feudal lords, and by the church were gradually consolidated, and the administration of justice was made exclusively a function of the state. At first the judicial function was not clearly differentiated from other political functions, and was exercised by the executive and his advisers, who, in addition to creating and administering law, decided disputes and punished offenders. As political business increased and property rights became more complex, special officials, expert in the law, branched off from the other organs of administration and formed a distinct department. This process, however, was gradual, and historic remnants of judicial power, such as the power to pardon, are still exercised by the executive.

2. *As to the status of individuals before the law.* In former times there was not uniform law for all ; neither were all equal before the law. Slavery was universal, and slaves had few legal rights. Women were legally at the mercy of their husbands ; and children, of their fathers. Society was often divided into castes, or classes, with varying legal rights. Even in the Middle Ages the clergy were a privileged class, with their own law and courts, and the nobility possessed special rights and privileges. The growth of democracy has created the present legal theory that all individuals are equal before the law, and class legislation or privileged treatment in the courts is frowned upon. The delay or evasion of punishment in the case of wealthy offenders and the favorable legislation secured sometimes by questionable means are survivals of the older order. Judicial procedure should never be so costly as to deprive the poor citizen of access to the courts ; and the improvement of legal methods, especially on the criminal side, should be the constant care of the state.

3. *As to procedure and punishment.* Methods of trial and forms of punishment also have undergone considerable transformation. The formality and complications of early judicial process have been considerably simplified, though many needless technicalities still survive. The cruelty and injustice

of trial by torture or of superstitious appeals to divine power through oaths, ordeals, or personal combat have been replaced by more reasonable process. Similarly, the desire for revenge or retaliation, resulting often in punishment of undue severity and falling on the innocent as well as the guilty, has been replaced by the ideas of prevention of crime and protection of society and of the reformation of the criminal. Modern penal systems still show survivals of former methods. Capital punishment is a form of retaliation, and lynch law is a reversion to the most primitive form of vengeance; fines whose amounts are adjusted to the degree of the offense, suggest the medieval *wergild*; and imprisonment, the usual penalty, contains the element of punishment as well as that of prevention. Modern juvenile courts and reform schools, together with improved methods of prison administration and greater knowledge of the causes and conditions of crime, may be expected to diminish the proportion of offenders, with resultant social benefit. On the other hand, the growing complexity of society and the multiplication of legal prohibitions tend to increase the number of offenders.

Functions of the Judiciary. The judicial department performs the important function of applying to specific cases the principles of custom, statutes, and written constitutions. It determines what the facts are in any given case, what the law is that applies to the case, and how the legal rights of the parties concerned are affected. In this process it frequently happens that cases arise not entirely covered by existing law, or that discretionary powers must be exercised by judges in determining the exact meaning of the law, in expanding its details, or in applying general principles of justice and morality. The judicial department thus becomes a creator of law, at least for the particular case concerned. In England and the United States, where judicial decisions are quoted as precedents and usually followed in similar cases, such "judge-made law" forms a considerable part of the entire system of jurisprudence. Constitutions and laws are always rigid; flexibility must be given to them by judges.

One school of jurists maintains that, when judges give decisions on cases not covered by definite existing laws, they are

not creating law but discovering it, that is, that they are finding the existing custom in regard to the question at issue and officially stamping it with their approval. This point of view is held by those who consider lawmaking by the courts a usurpation of legislative functions. Most modern writers, however, admit that judges, by means of the precedents they establish, actually make law. In this way the Roman judges built up a vast fabric of jurisprudence based upon the few principles of the Twelve Tables, and English and American judges have created the extensive body of common law. Even in Continental countries, where detailed codes exist which are presumed to contain the entire law and where judicial precedents are not binding in future cases, the quantity of judge-made law, especially of administrative law, is considerable. Under the English and American system of law the principle of *stare decisis*, that is, that a decision once given shall be binding in future cases, is generally observed, even though it may work certain hardships. The advantage of certainty in the law is believed to outweigh occasional injustice. In Continental countries the theory obtains that law should develop along lines of reason and abstract justice, and judges feel no obligation to follow outworn precedents.

While the main function of the judicial department consists in the adjudication of civil controversies between individuals or between individuals and the state, and in the trial of criminal cases, the courts also perform certain functions not strictly judicial in nature. They appoint certain officials, grant licenses, administer estates of deceased persons, appoint guardians, trustees, and receivers for bankrupt corporations. They issue injunctions to prevent the commission of wrongs and issue writs of various kinds, such as those of *habeas corpus* to prevent wrongful imprisonment and of *mandamus* to compel public officials to perform their legal duties. In some countries the courts not only decide cases brought before them but give declaratory judgments, stating what the law requires, when interested parties request such opinions. In this way the cost and delay of much litigation may be avoided. Similarly, in many states, courts give advisory opinions on questions of law when requested by the legislative or executive departments.

Neither declaratory judgments nor advisory opinions are given in the Federal courts of the United States, but these devices are in use in some of the states of the Union.

Organization of the Judiciary. While the executive department is generally organized under a single head, and the legislative department consists usually of two fairly numerous assemblies, the judicial department consists of a series of magistrates or judges, one above the other, with a supreme court at the head. In British countries and in the United States the courts, except for the higher tribunals of appeal, are usually presided over by a single judge. In Continental states opinion favors a plurality of judges, even in the lower courts, as a safeguard against arbitrary action or outside pressure. Present judicial systems are complex, though showing general resemblances. The ordinary courts decide legal controversies between individuals and try criminal cases. These courts are arranged in a series, with the lowest disposing of petty cases, higher courts having jurisdiction over more important cases, and a final court having jurisdiction over special cases and hearing appeals from the lower courts. In some states the same courts try both civil and criminal cases ; in others separate courts are used for each purpose. The jury system is used extensively for the determination of facts in criminal cases, and to a certain extent is used for civil cases in some countries. Many states, however, leave the decision in civil cases to judges alone, believing that they are more competent to deal with complicated legal questions.

In addition to the ordinary courts, there are many special courts created for particular purposes. These include military courts, commercial and industrial courts, courts of claims, labor arbitration courts, courts of impeachment, and ecclesiastical courts, where church and state are not separated. In Continental states administrative courts[1] form a separate branch of the department. For convenience of administration, the jurisdiction of the lower courts is limited to certain areas, that of the courts of first instance coinciding with local divisions and that of the higher courts covering wider areas. According to British and American practice, judges frequently

[1]See below, pp. 362-365

go on circuit, holding court in different places for the convenience of the parties concerned. In continental Europe the courts generally sit in the same place, and litigants must travel to the judicial centers. The judicial system as a whole, considered as a subdivision of administration, includes a numerous body of officials who aid in bringing cases before the courts, in administering judicial procedure, and in carrying out judicial decisions. Such officials include constables and sheriffs, clerks and bailiffs, public prosecutors, grand juries, and the like.

In states having the federal form of government there are usually two distinct systems of courts, one administering a uniform national law over the entire country, the other administering the separate laws of the federal subdivisions within their respective areas. The German Republic, if it be considered a federal state, was an exception to this principle, as it provided for a single, uniform system of courts, organized under national law, administering a uniform code of civil and criminal law and following a uniform procedure. With the exception of the supreme court (*Reichsgericht*), however, these courts were regarded as the courts of the separate units of the federation. rather than as national courts. In the United States, in addition to the Federal courts, of which there are three series,—district courts, circuit courts of appeals, and the supreme court,—each commonwealth determines the organization of its own judicial system and frames its own law and legal procedure. In spite of this fact, there is general uniformity in law and procedure in the various commonwealths, and the constitution of the United States requires that the courts of each state shall give full faith and credit to the records and judicial proceedings of the other states. The English common-law basis, on which American jurisprudence rests, and the tendency of courts in the various commonwealths to follow decisions given in other commonwealths create a fairly uniform system of law, though certain variations in the cases of marriage and divorce, regulation of child labor, and the chartering of corporations have proved troublesome.

The authority of the Federal and state courts in the United States is divided in accordance with the following principles,

which determine the jurisdiction of the Federal courts over two classes of cases :

1. *The nature of the parties concerned.* This includes cases in which the commonwealth courts would not properly have jurisdiction, such as cases concerning foreign diplomatic agents, disputes between two commonwealths, or cases in which the United States is a party, and cases in which commonwealth courts could not have entire jurisdiction, such as suits between citizens of different commonwealths.

2. *The nature of the question concerned.* This includes cases of admiralty or maritime jurisdiction, and all cases arising under the constitution, laws, and treaties of the United States This enables the national government to maintain the same interpretation of the constitution in all parts of the United States and to enforce a uniform system of Federal law.

Selection and Tenure of Judges. Since judges, serving as points of contact between the state and its individual members, perform functions of great importance, certain general principles should be observed in their selection and tenure. Judges should be thoroughly trained in the law. Judicial decisions demand a developed judgment and a vast amount of legal knowledge. Competence of judges is largely secured by selecting judges from the ranks of skilled lawyers and by a healthy public opinion which respects the dignity of the judicial office and disapproves of incompetency in its incumbents. The judges should be impartial. Neither personal nor political interests should interfere with the absolute integrity of justice. The judiciary should be independent of the other departments of government ; judges should be selected by a method which minimizes political considerations and should be guaranteed permanent tenure, adequate salary, and promotion on the basis of ability and legal eminence only.

Various methods are used in selecting judges in modern states. Election by the legislature was general in the early state governments in the United States, owing to the fear of the executive and to distrust of popular election. This method survives in several American commonwealths and is used in selecting federal judges in Switzerland. It is not generally favored because it tends to destroy the independence of the

judiciary and to result in political intrigue and in apportionment of judges according to local interests. Popular election of judges was favored in the first half of the nineteenth century as a result of the extreme theory of popular sovereignty that came in with the French Revolution. This method was tried for a time in France with disappointing results, and was adopted and is still followed in many states of the American Federal Union. It is used in Switzerland for the selection of judges in the lowest courts and is favored to some extent in states, such as Russia, that have adopted communist theories. The chief defect of this method is that it tends to secure weak and incompetent judges, since the mass of voters are not sufficiently discriminating to select the best men, and since those best qualified are usually not willing to engage in the methods necessary to success in a political campaign. Moreover, a judge whose tenure depends upon reëlection is likely to be influenced unduly by public opinion and to give decisions that will be popular rather than legally sound. When judges must also be politicians, the connection of the bench with the political machine or sometimes even with the underworld may result, with little likelihood of courageous and impartial justice.

The method of choosing judges in most states is that of appointment by the executive, that is, by the executive head in states having the presidential form of government and by the minister of justice in states having the cabinet form. This method is followed in England and in the Federal government of the United States. In many of the countries of continental Europe the lower judges are chosen by competitive examination, and appointment to the higher posts is made by the executive on the basis of seniority or proved ability. The system usually results in a learned and independent body of judges characterized by a high sense of professional honor but often too narrowly legal in their outlook. A method that is favored by many political thinkers is appointment by the executive from a list of nominations made by the judges of the court in which a vacancy occurs or by a body of higher judges, who are themselves independent and likely to be familiar with the qualifications of the men they recommend. Appointment by

the executive is favored on the ground that the executive is more competent to select able men than the legislature or the voters and that judges so chosen are more likely to be independent of political or sectional considerations or of popular influence. On the other hand, if the executive is free to appoint judges as he chooses, personal favoritism or political considerations may determine the selection.

Permanent tenure for judges during good behavior is the practice in most countries. Switzerland and most of the states of the American Union are exceptions. The idea of short terms for judges was adopted in the American commonwealths in the early nineteenth century, as a result of the same democratic theory that made many of the formerly appointive judges elective. In practice, many American states reëlect or reappoint their judges at the end of their terms, so that the tenure is fairly permanent. When judicial tenure is permanent, some method of removing incompetent, corrupt, or incapacitated judges must be provided. In continental Europe judges may generally be removed only after a legal trial before the court to which they belong or before a superior court. In Great Britain judges are removed by the Crown upon "address," or recommendation of both houses of Parliament. In the United States the usual method of removal is by impeachment, in which the lower house of the legislature prefers the charges and the upper house conducts the trial. The requirement of an unusual majority to convict is a partial safeguard against the use of the impeaching power for political purposes. In some of the American commonwealths, judges may be removed by the legislature, or by the governor on the recommendation of the legislature. Several of the American commonwealths permit recall of judges by popular election, but this method of removal is generally condemned as likely to interfere with the independence of the judiciary and to destroy the respect in which the courts should be held.

Relation of Judiciary to Executive. The relation of the judiciary to the executive may be viewed from the standpoint, first, of the judicial powers of the executive and its control over the judiciary; second, of the administrative powers of the judiciary and its control over the executive. The former

is in most respects a historic survival of the original unlimited powers of the executive. The latter, concerning which Continental practice differs from that in England and America, depends upon the prevailing theory as to the proper separation of powers and the relation of the government to the private individual.

1. *Executive control over the judiciary.* The executive exercises a certain control over the judiciary because, in last resort, judicial decisions are effective only if supported by the force of the state, and this force is at the command of the executive. Besides, the executive is frequently given large powers of appointment to judicial offices ; and while the permanent tenure that follows appointment may prevent continued control, the political complexion of the judiciary and the nature of their decisions will be affected by the type of men selected by the executive. A good example of this is the appointment of John Marshall to the United States Supreme Court, as a result of which numerous decisions favoring a nationalist theory of government were given long after the party which held different views had secured control of the other departments. In some countries the executive may assign judges to their stations and may punish judges who are not sufficiently subservient by placing them in the less desirable places.

Of some importance are the judicial powers that are still exercised directly by the executive department. These survivals of the original judicial powers of the state are concerned mainly with the maintenance of discipline in the army, navy, and civil service, and in the application and enforcement of administrative law. Laws concerning treason, courts-martial for military or naval offenders, and military law in times of riot or rebellion are examples. Modern states, however, create constitutional and statutory safeguards against the arbitrary use of the powers by the executive. The right of courts to uphold their dignity by punishing offenders for contempt of court is a historical survival of the time when a court was a mere division of administration, and disregard of its commands was an offense against the majesty of the king. The pardoning power of modern executives is a still more direct survival of their original judicial functions.

2. *Judicial control over the executive.* The most important judicial powers of the executive are found in the states of continental Europe, where a separate system of law and courts, controlled by the executive department, exists for the trial of officers of administration charged with illegal acts in the performance of their official duties. These administrative courts are characteristic of the different attitude that the government assumes to the individual in these states, as contrasted with that prevailing in Great Britain and the United States. In the latter the officials of government are responsible to the ordinary courts for their official actions; and officials are frequently held personally responsible for acts which, in the opinion of the courts, exceed their lawful authority. The legal immunity of the Crown in England and the special procedure of impeachment for the president and other high officials in the United States are, of course, exceptions. Even members of the army and navy are responsible for the performance of illegal acts; and in general, the military administration is subordinated to the civil. In this way, Anglo-Saxon states believe, individual liberty is guaranteed against executive encroachment, and the formation of a specially privileged bureaucracy is prevented. Naturally this gives large powers to the judicial department, which not only punishes offending officials but, by the issue of writs, may compel officials to perform or refrain from performing certain acts.

On the other hand, the states of Europe, emphasizing efficient government, believe that administrative officials, in the discretionary performance of their functions, may have occasion to violate the laws that apply to ordinary citizens. In such cases they are called to account before special administrative courts composed mainly of superior executive officials. These apply a special form of law and procedure, basing their decisions mainly on administrative ordinances, and taking into consideration political expediency and general considerations of justice. Under this system a series of administrative courts[1]

[1] L. Duguit, "The French Administrative Courts," in *Political Science Quarterly*, September, 1914; J. W. Garner, "Judicial Control of Administrative and Legislative Acts in France," in *American Political Science Review*, November, 1915.

is created, parallel with the ordinary courts, the former applying administrative law to public officials, the latter applying civil and criminal law to private individuals.

Separate administrative courts originated in France at the time of the Revolution. There the national administration was closely centralized, while the local judicial bodies were not united into a national system. There was strong opposition to the control which the courts had exercised over the administrative authorities under the old ré gime, and a feeling that, if the courts were allowed to decide controversies between the officials of the state and private citizens, judicial interference with the acts of the government would result and the efficiency of the administration would be destroyed. Accordingly, Montesquieu's theory of separation of powers was interpreted to mean that the judiciary should not interfere with the executive, rather than, as in the United States, that legislature and executive should be kept independent. At first the administration itself was allowed to decide administrative controversies, but later a separate series of administrative tribunals was set up to perform this function. Most of the European states have adopted similar systems. Even in the United States traces of administrative jurisdiction are found in the semi-judicial bodies acting under some of the administrative departments and in the commissions appointed for the regulation of certain public or quasi-public interests.[1]

Both the English-American system of subordinating public officials to the ordinary courts and the Continental system of separate administrative courts have certain advantages and disadvantages. While the former may offer better protection to private individuals against governmental aggression, it must be admitted that the application of administrative law by the ordinary courts results in a technical procedure and in the formation of a number of special remedies. Separate administrative law and courts make possible a simpler law and procedure for public officials in their administrative acts, and allow considerable elasticity in applying principles of expediency and

[1] H. M. Bowman, "American Administrative Tribunals," in *Political Science Quarterly*, December, 1906.

justice. At the same time there is the constant probability of conflict between the two series of courts, or between the administration and the ordinary courts. Sometimes both kinds of courts claim jurisdiction; sometimes both refuse to take jurisdiction. The fact that some legal method of settling these conflicts is provided does not obviate the delay and expense of litigation required to bring the case before the court that has final power of decision. There is always the danger that justice may not be secured under administrative courts if governmental policy demands a certain decision. Individual rights may be sacrificed when the administration is both the offender and the judge of the offense, and the principle of separate administrative law and courts may be used as a means of strengthening the executive power of the state. Fear of this consequence has led to a widespread prejudice against administrative courts in England and the United States, but experience has shown that it is largely unfounded. While the administrative courts were originally established to protect the officials of administration from interference at the hands of the judicial authorities, the administrative courts have become the protector of the private individual against arbitrary and illegal acts of the agents of government, and the means by which the state allows suits to be brought against it for acts that injure its citizens. In England and the United States the doctrine prevails that the state cannot be sued except where this right is specially conferred by statute; and even where the right exists, it requires special procedure and is subject to restrictions that make effective remedy difficult. The private citizen who is injured by the wrongful act of an official of government acting as the agent of the state may bring a personal damage suit against the official under the ordinary law and in the ordinary court; but in many cases this remedy is ineffective, since the official may be unable to pay the damages that are awarded. Under the system of administrative courts, the citizen who is injured by the agents of the state may sue the state in the administrative courts, with simple procedure and at small cost, and obtain pecuniary remedy. Modern opinion tends to favor the principle that the state should be held legally liable for the wrongful acts of

its public officials, and to recognize the merits of the system of administrative jurisdiction.

Relation of Judiciary to Legislature. In addition to the facts that much of the law which courts interpret and apply is created by legislatures and that legislative appropriations are necessary for the maintenance and operation of the judical department, legislatures exercise a further control over the ordinary judiciary.

1. *Legislative control over the judiciary.* Except for a few high courts which are established by constitutional provisions, the judicial departments of modern states are created by legislative statute and may be modified or abolished by legislative enactment.

In most states certain judicial powers have been retained by the upper houses of the legislatures. The reasons for this are historical, and considerable difference exists as to the parties and subjects over which they have jurisdiction and the nature of the penalties that they may impose. In Great Britain the House of Lords is nominally the highest court of appeals. In practice its judicial functions are exercised by the Lord Chancellor, who may be a commoner, and by four jurists appointed by the Crown to serve as Lords of Appeals. Impeachment, though it was an important means of controlling the great officials of government in the development of the English constitutional system, is no longer needed, as the ministry is responsible to the people through the House of Commons. The framers of the United States constitution, influenced by the theory of the separation of departments, limited the judical powers of the Senate to the trial of high governmental officials, including Federal judges, and restricted the penalty to removal from office and disqualification for future officeholding. This power of impeachment has been sparingly used, and the independence of the judiciary has not been threatened. In France, under the new Constitution of 1946, ministers may be impeached for crimes and misdemeanors by the High Court of Justice on indictment by a majority vote in the National Assembly.

2. *Judicial control over legislation.* The most important form of judicial control over the legislature is that exercised

by the courts in declaring statutes void because unconstitutional. This principle has reached its highest development in the United States. In Great Britain the enactments of minor legislative bodies may be declared illegal by the courts, and the Judicial Committee of the Privy Council may declare statutes of colonial legislatures unconstitutional; but the supremacy of Parliament is the keystone of the constitution, and no court has ever claimed the right to declare an act of Parliament null and void because of its unconstitutionality. On the continent of Europe the practice of judicial review of legislation was for a long time unknown, but has made some headway in recent years. In the German Republic the supreme court might set aside state laws that were incompatible with national laws, and it asserted the right to pass on the question of the constitutionality of national laws. In Austria the supreme Constitutional Court, on application of the ministry, decided upon the constitutionality of federal laws. The constitution of Czechoslovakia provided that laws which conflicted with the constitution were invalid and like that of Austria, referred the question to a special constitutional court. In Rumania by constitutional provision, and in Norway and Greece by judicial precedent, the courts pass upon the constitutionality of laws. In France the acts of parliament are removed from judicial control, but the Council of State may annul ordinances that are in excess of the legal powers of the body issuing them. Since a large part of French legislation consists of administrative ordinances, the amount of judicial control is considerable. A growing number of French jurists favor the adoption of the principle that courts may declare laws unconstitutional, and it is likely that the principle will find further acceptance in European countries. The doctrine of judicial control is applied to some degree in most of the Latin-American states, reaching its highest development in Brazil.

In states with the federal form of government, necessitating an adjustment of the respective powers of the central government and of its main subdivisions, the power of the courts to prevent the latter from exceeding their constitutional powers has been generally recognized. In Switzerland

the federal supreme court may set aside acts of the legislatures of the cantons that conflict with the federal constitution. Similarly, in the Dominion of Canada and in Australia acts of the provincial parliaments that conflict with national law may be declared invalid by the courts. To maintain the equilibrium of a federal system, and to settle issues that arise out of conflicts of authority in a dual system of government, some arbiter is necessary, and modern opinion is agreed on the principle that the judiciary is best adapted to perform this necessary and difficult task. However, in most federations the courts seldom inquire into the constitutionality of laws passed by the national legislature, the constitution of Switzerland specifically providing that every statute of the federal assembly must be regarded as valid.

In the United States, not only do the supreme courts of the commonwealths disallow acts of the commonwealth legislatures if contrary to commonwealth constitutions, but the supreme court of the United States disallows commonwealth statutes if opposed to the Federal constitution or to treaties or statutes made in pursuance thereof, and even sets aside acts of Congress if contrary to the interpretation of the Federal constitution that is held by the court. This large judicial power is not distinctly set forth in the constitution of the United States or in those of its commonwealths, but has been gradually developed by the courts as desirable and necessary for the maintenance of a federal government with coördinate departments and of a written constitution. While it was suggested in some early decisions of English courts that acts of Parliament might be so unjust that the courts would refuse to enforce them,[1] this suggestion never became an established rule in English jurisprudence. In the American colonies however, appeal was frequently taken against actions of the colonial legislatures to the king in council, and such actions were often declared invalid on the ground that they exceeded the powers granted by the colonial charters. Thus grew up in America the idea of written constitutions, of delegated powers, and of judicial review of legislative acts.

Even before the adoption of the Federal constitution the

[1] See 8 Coke, 114.

courts in several of the American states declared acts of the legislatures unconstitutional, the most important examples occurring in New Jersey[1] in 1780 and in Rhode Island[2] in 1786. The history of the Federal Convention shows that it was intended to give the Federal courts power to nullify commonwealth statutes if contrary to the Federal constitution, but opinion was divided concerning the extension of this power to acts of Congress. Many statesmen believed that such authority was an inherent part of the judicial power. The ablest defender of this point of view was Alexander Hamilton,[3] who argued that the constitution was the fundamental law, that the judiciary must determine its meaning, that the powers of Congress were constitutionally delegated powers, the extent of which Congress itself could not determine, and that legislative acts which were in conflict with the constitution must be declared void by the judiciary, since they were obliged to give their decisions in accordance with fundamental law. In 1803, in the case of *Marbury* v. *Madison*, the supreme court declared an act of Congress unconstitutional. Chief Justice Marshall, in giving his decision, followed closely the reasoning of Hamilton, arguing the supremacy of the constitution over statute law, and the right of the judiciary to interpret and enforce the will of the people as expressed in the constitution against the limited and delegated powers of the legislature. In 1810, in the case of *Fletcher* v. *Peck*, the supreme court for the first time distinctly annulled a commonwealth statute.

Similar decisions disallowing commonwealth statutes were frequently made, but the power to declare laws of Congress unconstitutional was not again exercised until 1851. The Dred Scott case (1857) was a broad application of the power of judicial control, and since the Civil War judicial revision of Federal legislation has rapidly extended. More than fifty acts of Congres and more than three hundred state statutes have been set aside by the supreme court. This principle of judicial revision, worked out by the Federal court, was adopted in the commonwealths with reference to their constitution and laws, and is now an accepted part of American jurisprudence. It leads to strong respect for constitutions and prevents hasty

[1] *Holmes* v. *Walton.* [2] *Trevett* v. *Weeden.* [3] *The Federalist*, No. 78.

change and radical legislation ; at the same time, because of the difficulty of constitutional amendment, it provides a certain elasticity in interpreting and extending constitutions to meet new conditions. This is especially true in the Federal government of the United States, where decisions of the supreme court have been perhaps the most important method of constitutional expansion.

It must be remembered, however, that the courts, even in the United States, may act only when the case comes under the jurisdiction that is given to them by the constitution and the laws. With many broad questions of constitutional law affecting executive and legislature the courts may not deal, and they may act only when the rights of legal persons are involved and when cases are properly brought before them. Even then the decision, while it is conclusive as to the parties before the court and serves as a precedent for future cases, does not repeal the statute concerned. It declares that in the particular case before it the statute will not be applied because it never was a valid statute. American respect for the judiciary, attributable in part to the facts that the government has been created and controlled and public opinion determined, to a large extent, by lawyers,[1] causes the other departments of government to yield deference to such decisions, and the objectionable statutes are repealed or become obsolete through nonenforcement.

The advantages of the principle of judicial control over legislation have been pointed out by many writers. In the federal system of government, where the constitution marks out a sphere of authority for the central government and another for that of the member states or provinces, it is necessary that the courts should compel each to keep within its legal sphere and should settle conflicts of authority ; otherwise the existence of the federal system would be impossible. Where a written constitution exists, the power of the courts to compel the legislature to keep within its constitutional powers maintains the distinction between constitutional and statute law. If the legislature determines the scope of its own power, and the courts have no right to set aside

[1] A. L. Lowell, *Essays on Government*, No. III.

such of its acts as violate constitutional limitations, the constitution becomes a mere scrap of paper, of no binding power. Where a written constitution contains a bill of rights guaranteeing a domain of civil liberty to the individual against governmental interference, the right of the courts to set aside legislation that encroaches upon this field is of especial value.

Nevertheless, the principle of judicial review has been seriously criticized. It has been attacked on the ground that it violates the principle of separation of powers, giving to the courts a veto over legislation that makes the court the final lawmaking body. This imposes political and legislative duties upon the courts, in which they are compelled to decide questions of policy, rather than legal controversies. Many believe that the courts, because of the conservative and narrow nature of legal training, are not properly fitted to decide broad questions of public policy, that they tend to be more interested in property rights than in human rights, and that they often apply outgrown principles to rapidly changing economic and social needs. Those who desire change and reform have more confidence in the legislature than in a judicial aristocracy, and accuse it of impeding progress and thwarting popular demands. There has even been a movement toward the recall of judicial decisions, that is, the reference of decisions declaring statutes unconstitutional to popular vote, which may uphold the law in spite of the court's opinion to the contrary. This proposal has been generally condemned as destructive of the independence of the judiciary. While judges in applying constitutional principles to new legislation may prevent as rapid change as is desired by some, they are in time influenced by changing public opinion and by new social standards, and modify their interpretation of constitutions and laws accordingly.

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PART IV. THE FUNCTIONS OF THE STATE

CHAPTER XXI

ENDS AND FUNCTIONS OF THE STATE

OUTLINE

The Importance of the State
1. Theories emphasizing the state
2. Theories emphasizing the individual

The Ends of the State

The Nature of the Functions of the State
1. Essential functions
   a. Based on state power
   b. Based on individual rights
2. Optional functions
   a. Nonsocialistic
   b. Socialistic

The Importance of the State. Whether the state is an end in itself or whether it is merely a means enabling individuals to attain their ends has been a much disputed question.

1. *Theories emphasizing the state.* Ancient writers generally regarded the state as the highest aim of human life and as an end in itself. The usual belief in its divine origin was sufficient justification for its existence and authority. The idea that there were individual interests distinct from general interests did not exist. Accordingly, ancient writers ignored or minimized the concept of individual freedom and exalted and glorified the importance of the state. Plato[1] and Aristotle[2] taught that the best life of the individual was possible only in the state. The nature of man destined him for a political life, and the state was a necessary institution for the development of his powers and the satisfaction of his needs. The state was more real than the individuals it included. It was a living personality, absorbing in its life all other personalities; man and state were bound together in a social whole, neither having interests contrary to the other. Since only through the state

[1] *The Republic.* [2] *Politics.*

could man achieve his highest ends, no limit could be set to the activities undertaken by the state. Whatever was for the best interests of man was a legitimate public function.

A similar view of the high importance of the state was held by German and English idealist philosophers. Influenced by the nationalist doctrines of the nineteenth century and reacting against the revolutionary principles of natural rights and the emphasis on individual freedom, they pointed out the value of collective responsibility and control through governmental agencies. The state was justified because it was a natural, historical growth. Hegel,[1] in Germany, taught that the state was a natural organism, representing the highest phase of the historical "world process." It was the real person, and its will was the manifestation of perfect rationality. Only as a member of the state had the individual reality ; a perfect life consisted in living in accordance with the universal will. The citizen existed for the sake of the state. In its external relations the state was subject to no will but its own, and the ordinary rules of morality that obtained among individuals could not be applied in the relations among states. Hegel developed the idea of will as the ultimate element in politics and glorified the sovereignty of the state. Under this theory the value of the individual was ignored, and attention was directed to the attributes of political authority rather than to the rights of man. Bosanquet,[2] in England, linked Rousseau's theory of the general will with the German metaphysical idea of the state as the ultimate moral being, and insisted that there could be no conflict between state and individual. The state, as an organism with a personality and will of its own, absorbed the individual will and stood forth as the supreme achievement of human organization. Very extensive and positive state action was thus justified. An extreme modern example of the glorification of the state, from the point of view of realistic politics rather than of idealistic philosophy, is found in the writings of Treitschke.[3] He viewed the state as an end in itself and

[1] *The Philosophy of Right* (1821), translated by S. W. Dyde,
[2] *Philosophical Theory of the State* (1899).
[3] *Politics*, translated by B. Dugdale and T. de Bille (1916).

as "the highest thing in the eternal society of men." Emphasizing the idea of will, he viewed the state as power, and argued that might is the supreme right.

The utilitarian philosophers, who aimed at the greatest good of the greatest number, and the rationalists, who believed in the ability of man to perfect his institutions through the use of reason, paved the way for many reform movements which led to extensive legislation and to increased emphasis on the value of the state. Likewise those thinkers who, influenced by the scientific theory of evolution, drew analogies between the state and a biological organism and viewed the state as an inevitable historical and evolutionary growth tended usually to consider the state as more real and important than the individuals who compose it and who are mere cells in the body politic.[1]

While the state socialists[2] aimed at the welfare of individuals, rather than at the aggrandizement of the state, and viewed the problem in its international aspects, rather than in terms of the national state, nevertheless their doctrines tended to increase the importance of the state because of their emphasis on collective responsibility and on extensive state action. The state socialists wished to reorganize the existing state system in order to place control in the laboring classes; but the new state, thus organized, would be important and powerful. Communist theories,[3] as applied in present-day Russia, work in the same direction. The social unit, rather than the individual, is considered important. The Fascists[4] in Italy and the Nazis in Germany also viewed the state as an end in itself, placed it above the individual, who existed for its purposes, and placed stress upon the ideals of state power and political destiny.

2. *Theories emphasizing the individual.* On the other hand, there have been thinkers who attacked the state and wished to minimize its value. Anarchistic doctrines[5] of various types have attacked the state and proposed its immediate or ultimate destruction. In the Middle Ages many ecclesiastics

[1] J. K. Bluntschli, *Theory of the State*, Book I, Chap. I; Book V.
[2] See Chap. XXII, pp. 401-408.
[3] See Chap. XXII, pp. 413-415.
[4] See Chap. XXII, pp. 415-418.
[5] See Chap. XXII, pp. 391-393.

arguing for the supremacy of the church viewed the state as a necessary evil, the result of man's imperfections, concerned with the lower material interests of men and distinctly inferior to the church, which was concerned with the more important spiritual aspects of life. The revolutionists of the eighteenth and nineteenth centuries, opposing the paternalistic monarchies of their time, viewed the state as an artificial creation of man, rather than as a divinely established institution or a natural organic evolution. They placed emphasis on individual freedom and the natural rights of man, and opposed extensive state action. The individual, rather than the state, was the unit to be given chief consideration. As men became more rational and improved their institutions, the need for the state and the scope of its authority would diminish.

In recent years the state has been attacked on various grounds.[1] Internationalists, interested in world organization and coöperation, oppose the importance attached to state sovereignty and independence in the rise of the national state, with its emphasis on state will and power. Individualists[2] oppose the expansion of state functions and the increasing socialistic interference with individual rights and freedom. Pluralists, interested in the rights of various groups and associations within the state, oppose its assumption of supremacy over them, and assert their independence within their own fields.[3] The modern opposition to the state thus represents in part a reaction against the tendencies of the past century to overemphasize the importance of the state and of its power to regulate human life, and in part a new tendency, especially of economic associations, to take over a large measure of the control formerly exercised by the state.

Both the view that the state is an end in itself without regard to the interests of individuals, groups, and other states,

[1] E. Barker, "The Discredited State," in *Political Quarterly*, February, 1915; A. D Lindsay, "The State in Recent Political Theory," in *Political Quarterly*, February, 1914; N Wilde, "The Attack on the State," in *International Journal of Ethics*, July, 1920.

[2] H. J. Laski, *Liberty in the Modern State*.

[3] W. Y. Elliott, "Sovereign State or Sovereign Group," in *American Political Science Review*, August, 1925; M. P. Follett, *The New State*; *Group Organization, the Solution of Popular Government*.

and the view that the individual is all-important and that the state is merely an artificial contrivance of man for the purpose of promoting and safeguarding separate individual interests, are somewhat one-sided. The former theory assumes the existence of a common will, which represents the real and rational will of all the members of the social group. This will is represented in the state ; hence men obey the state because it most truly represents their best selves. They are in reality free, under the authority of the state, even though they may not realize it. While there are elements of truth in this theory, in that individuals are often ignorant of their own best interests and that the will of the state, enforced by compulsion, may promote their welfare against their opposition, it is fundamentally fallacious. The only real will is the individual will, and individual wills are by no means identical. Even when a common will exists, it does not always find its expression in the state, but may appear in various forms of social organization. The will of the state is formed by the conflict of many divergent individual wills, which contend with each other for the mastery of social control. The resultant will of the state is not based on unanimous agreement, nor is it always determined by rational considerations, nor is it always a good will in intention or in consequences. The importance and value of the state can be judged only by its results. The state differs from other associations in that membership in it is compulsory and in that it can, in last resort, enforce its rules upon its members. The extent of its power and the width of its functions give to it a significance greater than that of other associations. Usually the welfare of the state and that of its individuals coincide, but sometimes they diverge somewhat, and occasionally they may be altogether opposed. The state may be compelled, either for its own preservation or in the interest of future generations, to demand heavy sacrifices from its present members. At other times the needs of individual welfare call for extraordinary aid and support from the state, which thus incurs serious obligations or imposes them upon future generations. The state may refuse to allow certain individuals to practice their religion ; it may tax their property out of existence ; it may even compel them to give up their

lives in a war that they believe to be morally wrong. The state is an organization for enabling the mass of mankind to realize social welfare on the largest possible scale. Its value depends upon the degree to which it accomplishes this purpose.

The Ends of the State. Various attempts have been made to set forth the purpose, or ends, of the state. These attempts show differences in detail and in emphasis, depending upon whether state or individual is given chief attention, but show certain fundamental similarities of conception. John Locke stated that the end of government is "the good of mankind," but believed that "the great and chief end of men uniting into commonwealths and putting themselves under government is the preservation of their property."[1] Adam Smith declared that the state has three great purposes : first, that of protecting society from the violence or invasion of other independent societies ; second, that of protecting, as far as possible, every member of the society from the injustice or oppression of every other member of it, or the duty of establishing an exact administration of justice ; third, that of erecting and maintaining certain works and certain public institutions which it can never be for the interest of any individual or small number of individuals to erect and maintain.[2]

Among German writers, Holtzendorff[3] held that the state has a triple end. The first is the development of the national power by which the state may preserve its existence and position against other states and its authority over all individuals and associations of individuals within itself. The second is the maintenance of individual liberty, or that sphere of freedom which the state marks out for the individual and protects against encroachment on the part of government or individual. The third is the promotion of the social progress and civilization of the people, which the state secures by educating and aiding its subjects. Bluntschli[4] believed that the direct end of the state consists in the development of the national strength

[1] *Two Treatises of Government*, Chap. IX.
[2] *Wealth of Nations*, Book IV, Chap. IX,
[3] *Principien der Politik*, pp. 219 ff.
[4] *The Theory of the State*, Book V, Chap. IV.

and capacity and the perfecting of the national life. The indirect end consists in the maintenance of the freedom and security of the individual. He attached importance to the theory that the aim of the state should be the promotion of general welfare, but pointed out that there is great disagreement as to what constitutes general welfare, and that this aim might lead to arbitrary and despotic action on the part of the state.

Many American writers have attempted a formulation of state ends. Burgess[1] separated the proximate from the ultimate ends of the state, arranging them as primary, secondary, and ultimate purposes, each end becoming in turn a means for the accomplishment of the succeeding end. On this basis the first, or proximate, end of the state is the establishment and adjustment of government and liberty. The state must maintain peace and law, even if in so doing it crushes both individual freedom and national genius. However, as soon as the disposition to obey law and observe order is established, the state must mark out a sphere of individual liberty and must, from time to time, readjust the relation of government to liberty, widening the latter as civilization develops. The secondary aim, growing out of the first, is the perfection of the principle of nationality in the state and the development of the national genius. For this purpose national states, resting on natural geographic and ethnic foundations, are the best instruments. The final aim is the perfecting of humanity, the civilization of the world. In a universal world state, human reason, perfectly developed, would attain to universal control. The ends of the state, in historical order, would thus be "first, the organization of government and of liberty, so as to give the highest possible power to the government consistent with the highest possible freedom to the individual ; to the end, secondly, that the national genius of the different states may be developed and perfected and made objective in customs, laws and institutions ; from the standpoints furnished by which, finally, the world's civilization may be surveyed upon all sides, mapped out, traversed, made known, and realized."

[1] *Political Science and Comparative Constitutional Law*, Vol. I. pp. 85-89.

Willoughby,[1] while distinguishing between the highest conceivable purposes that may be subserved by the state's existence and the aims of a given state that are practically attainable under given conditions of civilization, states the former as follows : "first, those that are concerned with the power of the state, aiming at the maintenance of order and the preservation of the state's independence in the family of nations ; second, the creating and maintaining of the widest possible degree of liberty, including the perfection of its governmental machinery for this purpose, and the education of its citizens so that they may become progressively more capable of exercising this freedom ; and, third, the promotion of general welfare, economic, intellectual, and moral." Garner[2] also makes a threefold classification of state ends, as follows : "First, the state must maintain peace, order, security, and justice among the individuals who compose it. This involves the establishment of a re'gime of law for the definition and protection of individual rights and the creation of a domain of individual liberty. Secondly, the state must look beyond the needs of the individual to the larger collective needs of society. It must care for the common welfare and promote the national progress by doing for society the things which the common interests require, but which cannot be done at all or done efficiently by individuals acting singly or through association. Finally, the ultimate and highest end of the state is the promotion of the civilization of mankind at large, its aim thus becoming universal in character."

An able group of modern writers, in considering the purpose of the state, attempt to avoid abstractions, to apply pragmatic tests to the accomplishments of the state, and to view it in the light of the functions it performs. Laski,[3] representing this group, argues as follows : "To live with others is the condition of a rational existence. Therein is implied the necessity of government, since the activities of a civilized community are too numerous and too complex to be left unregulated. The state is an organization for enabling the

[1] *The Nature of the State*, Chap. XII.
[2] *Introduction to Political Science*, pp. 316-317.
[3] *Grammar of Politics*, Chap. I.

mass of men to realize social good on the largest possible scale. Its functions are confined to promoting certain uniformities of conduct, and the area it seeks to control will shrink or enlarge as experiment seems to warrant. The state, therefore, does not set out to compass the whole range of human activity. It may set the keynote of the social order, but it is not identical with it. The state possesses power because it has duties. It exists to enable men, as least potentially, to realize the best that is in themselves. It is judged, not by what it is in theory, but by what it does in practice. The individual is a member of the herd, but he is also outside it, passing judgment upon its actions."

It is evident to any thoughtful student of political science that the purpose, or ends, of the state cannot be stated in any exact or absolute form for all times and peoples. Much depends upon the degree of civilization, the stage of political development, and the nature of the problems of the period. Much again depends upon what interests are considered of most value and importance. The welfare of the state itself may be given chief attention if the state is believed to subserve a purpose in human history so important that the interests of individuals, separately or collectively, may be disregarded in order that the strength and security of the state may be advanced. The welfare of those in charge of the government may be given first place if a proprietary conception of political authority is accepted or if a divine right of rulership is held. The welfare of some particular class or classes in the citizen body may be aimed at if it is believed that such persons possess certain inherent rights. The idea that all men have equal rights is a comparatively recent dogma. The welfare of the entire citizen body may be viewed as the end of the state, but this still leaves open to discussion the questions of what are the true interests of the governed, who shall determine them, what relations exist between the welfare of a given individual and the welfare of other individuals or of the community as a whole, and how far the welfare of one political group may be harmonized with that of other political groups and with that of humanity as a whole, including future as well as present generations. Just as opinions have differed con-

cerning the best form of governmental organization, because men do not agree as to who should determine and administer the policy of the state, so opinions differ as to what the state should do in order to fulfill its proper purpose. No phase of political speculation today is more important or leads to such wide divergence of opinion as that concerned with the functions of the state.

The Nature of the Functions of the State. Whatever may be the philosophic basis upon which the state is justified, or whatever view may be held as to its ultimate aims and purposes, the question of what functions the state should perform is one of immediate and practical importance to statesmen. All states, while potentially capable of exercising the full measure of their sovereign powers, find it desirable to limit their activities and to leave a field of free action to their individuals. Accordingly, constitutional and legal restrictions are placed upon the unlimited exercise of state authority, although, especially in time of war, a legal method is provided for the extension of state activities if needful for the safety and welfare of its people. Attention must be given to those functions which the state must perform and those for whose performance the state is essentially fitted, and to the aims which, under given conditions of civilization, are desirable and practically attainable. Obviously, changing social conditions and tendencies cause corresponding changes in ideas concerning the proper scope of state activities. Furthermore, the growth of political consciousness and the widening of popular control of government have created new concepts as to the desirability of state action and the possibility of social reform. Governmental activity opposed by popular opinion when the majority of people have no voice in government may be enthusiastically favored when the government is in the hands of the people. In undertaking functions for general welfare, each state must decide, in accordance with existing conditions, whether the advantages derived from public control will more than compensate for the possible weakening of the self-reliance of its people, for the encroachment upon their personal freedom, and for the danger of corrupting the government itself as it expands its powers.

The functions of the state are usually classified into (1) those which are necessary or essential to state existence and (2) those which are nonessential or optional. The first result from the very nature of the state; the latter may or may not be considered desirable. From the point of view of their general aim, the activities of the state include (1) those concerned with the power of the state, (2) those concerned with the legal rights and liberties of its people, and (3) those concerned with the promotion of the general welfare. Of these, the first two fall mainly under the heading of essential functions; the latter, under that of optional functions.

1. *Essential functions.* In order that the state may exist as a sovereign political organization it must exercise certain functions. These functions are determined by the threefold relations of state to state, of state to individual, and of individual to individual. The state must determine its relations to other states in peace and war; it must determine its relations to its own citizens as to their share in political power, their freedom from governmental interference, and their actions that are dangerous to the state; and it must regulate the dealings of its citizens with one another so as to secure order and justice. In carrying out these functions the maintenance of army, navy, police, and a large number of officials, the raising and spending of vast sums of money, and the exercise of extensive and varied powers are essential. These functions aim at the maintenance of internal peace, order, and safety, the protection of persons and property, and the preservation of the state's own existence and external security. These are the original functions of the state, and they persist under any form of government. A closer examination of the essential functions of the state shows that they follow naturally from the definition of the state and from its essential attribute, sovereignty. Consequently they must adjust the relation of sovereignty, or independence, in its external aspect, to other states, and, in its internal aspects, to individual liberty. These functions are therefore concerned with the sovereignty of the state in its two aspects of power and liberty.

a. Based on state power. Under the aspect of power are included the diplomatic and military relations of a state to other

states, the maintenance of state existence by the rights of taxation and eminent domain, and the maintenance of order and security by means of the police service and the criminal law. These functions emphasize the authority of the state.

b. Based on individual rights. Under the aspect of liberty are included the determination of the rights of citizens to share in governing, the education of citizens in political methods, and improvements in state organization and administration. On its negative side this aspect of state functions includes a guaranty, within a certain field, maintained by the laws and the courts, against interference on the part of either government or individual with the life, liberty, or property of citizens. These functions emphasize the political and civil liberty of the individual.

2. *Optional functions.* Optional functions are exercised not because they are essential to the existence of the state and the maintenance of its power or to the liberty and security of its citizens but because they are expected to promote general welfare in its moral, intellectual, social, and economic aspects. While optional, they are at the present time of great importance, in many cases the boundary line separating them from the essential functions being extremely difficult to determine. They include activities many of which, if left to individuals, would be inefficiently or unjustly performed or not performed at all. Accordingly, they may be subdivided into nonsocialistic and socialistic functions.

a. Nonsocialistic. Nonsocialistic functions are those which, though not essential, are natural and normal for the state to perform since, if neglected by the state, they would probably not be performed at all or would be performed less effectively by private enterprise. The activity of the state in this field, therefore, does not to any considerable extent limit or interfere with individual activities. They include such functions as the care of the poor and incapable, the maintenance of public parks, sanitation, elementary education, and a large amount of investigating and statistical work, the purpose of which is to improve the environment and give information by which further improvement may be made. They include also the operation of the postal service, the construction of roads,

bridges, canals, harbors, and similar instrumentalities of trade and commerce, and the regulation of occupations and businesses that have a public interest.

b. Socialistic. Socialistic functions include such activities as could or would be exercised by private initiative, but which the state may choose to take over, wholly or in part, because it desires to prevent certain evils that result from private control or because it believes that they can be more effectively managed by governmental authority. Examples are the ownership and operation by the state of railroads, telegraph and telephone lines, of gas, water, and electric-light and power works, the maintenance by the state of theaters, lodging houses, pawnshops, universities, and museums, the encouragement of certain industries by bounties or tariffs, the maintenance of employment bureaus, the granting of old-age pensions, the regulation of labor, and many other activities that aim at social improvement or at equalizing the distribution of wealth and of opportunity.

The line that separates nonsocialistic from socialistic functions is difficult to draw, and shifts as social and economic conditions change. Activities which are viewed as wholly private in one period may be viewed as natural and normal for state action in another period. In some respects modern states are narrowing the scope of their activities. The private life of individuals and their intellectual and religious beliefs are seldom interfered with ; and the family and the church, once merged in the state, are now separate institutions. Even these, however, are legally subordinate to the state, and some of their most important powers have been transferred to it. Marriage and divorce are civil functions ; rights of kinship and inheritance are regulated by law, and in cases of orphanage or parental neglect the state undertakes the care of children. Similarly, the state dispenses charity, regulates morals and amusements, provides education and undertakes scientific investigation, activities which were all at one time under the control of the church. The development of modern industrial conditions has been largely responsible for the expansion of state functions in the economic field. As society becomes more complex and interdependent, general welfare demands

that the interests of the individual be increasingly subordinated to those of the community. This tendency is aided by the growing confidence of mankind in its ability to reform its institutions, and by the democratic basis of the state, as a result of which action by the state is welcomed rather than opposed or regarded with suspicion. Wide difference of opinion exists concerning the desirability of extending state authority in the optional field, and various theories have been put forward concerning the proper basis for state action and the proper scope of its functions. Some of these will be discussed in the following chapter.

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CHAPTER XXII

THEORIES OF STATE FUNCTIONS

OUTLINE

Variations in Theory
Anarchism
Individualism
  1. Ethical
  2. Political
  3. Economic
  4. Scientific
State Regulation
Socialism
Recent Theories
  1. Syndicalism
  2. Guild socialism
  3. Communism
  4. Fascism
  5. National Socialism
Conclusion

Variations in Theory. The final purpose of political philosophy is to determine the essential nature of political authority, the relation in which the individual stands to the state, and the relation in which states stand to one another. Accordingly, theories of state function cannot be entirely separated from those of state organization. The question of what the state should do depends to a large extent upon who controls the state and how effectively it is organized to accomplish the desired purposes. On the other hand, the question of how the state should be organized depends to a large degree upon what the state is expected to accomplish. Functions which may be satisfactorily performed by some states might be undesirable if attempted by others. Forms of government suited to one people, who have certain needs which the state is expected to meet, would be entirely unsuitable to other peoples, with different problems. Similarly, there is a close connection between the activities of the state

in its relation to its citizens and its activities in its relation to other states. A country that is faced with difficult international problems or whose existence is threatened by a powerful enemy may feel compelled to control and discipline its own people in a way that would not be necessary for a state whose external relations were untroubled. In this chapter, attention will be given to the main theories that have been put forward concerning the proper scope of state function, especially in its internal aspects. The main problem involved is the relation of the state to the individuals composing it and the degree to which the state should restrict the freedom of individual action or should itself act to promote what it considers the general welfare. These theories show vide variation, ranging from the point of view of the anarchists at one extreme to that of the state socialists at the other. The former deny the necessity of the state; the latter would extend its activities to the maximum extent. Between these extremes are all shades of opinion, varying from the individualists, who would limit the state to essential functions only or would permit only a narrow range of optional functions, to those who would permit a considerable degree of state regulation and positive action for the promotion of the common welfare. In conclusion, some attention will be given to certain theories that have appeared in recent years, and that have been given practical application in several modern states. These theories are concerned with the problems both of organization and of function.

Anarchism. The simplest solution of the problem of state function is that of the anarchists, who would abolish the state entirely. They aim to combine the ideals of individualism and socialism, the two great currents of nineteenth-century social reform. From the former they derive their dislike of the state and their enthusiasm for individual initiative. From the latter they derive their hatred of private property and their belief that the workers are being exploited. Individualistic anarchists place property rights in the individual and leave him free to join in associations or not, as he chooses. Communistic anarchists place property rights in the hands of voluntary social groups, and emphasize the welfare of humanity rather

than that of the individual. Anarchists[1] are in agreement in opposing the use of coercive authority and in carrying the doctrine of individual freedom to extreme lengths. They would destroy the state and replace it by voluntary associations resting on the continuing agreement of those composing them. The only government that they would permit would be that to which men freely give their consent. Modern states, they believe, are corrupt and tyrannical, conducted in the interests of privileged classes, and repressive over large and dissatisfied groups. They deny the right of any person or of any association to rule over any individual against his will. They aim at justice and freedom, and believe that the exercise of forcible authority by the state is never justified.

Anarchists are not in agreement as to the method by which the state should be overthrown or as to the nature of the social and economic regime which would follow the abolition of political authority. Revolutionary anarchists believe that the existing governmental system should be resisted in every way, and should be destroyed by violence. They advocate assassination and destruction, arguing that direct action alone can accomplish their purpose. Philosophical anarchists hold that the state may be gradually weakened and finally destroyed by peaceful persuasion, the effect of which will increase as man becomes more enlightened intellectually. They are confident that human society is evolving toward a condition in which coercive political authority will be no longer needed and will therefore disappear. There is also divergence of opinion among anarchists as to how economic goods should be held and distributed, though in general they oppose private property as leading to inequalities that destroy individual freedom. Anarchism is primarily a destructive and critical theory, and those who have outlined constructive programs are not in agreement as to the nature of the system that should replace the state. In general they favor a series of voluntary associations, which men may join if they will and

[1] W. Godwin, *An Inquiry concerning Political Justice* (1793); P. J. Proudhon, *What is Property?* (1800); *System of Economic Contradictions* (1846); M. Stirner, *The Ego and his Own* (1844); P. Kropotkin, *Law and Authority* (1886); L. Tolstoi, *What to Do* (1887); *The Kingdom of God is Within You* (1894); B. Tucker, *Instead of a Book* (1893).

from which they are free to withdraw. These associations would perform the few essential functions of government, such as maintaining order and enforcing contracts, and would offer their services to those who needed their aid or protection. Such a system, they believe, is superior because it abolishes coercive authority and rests on the principle of self-government. It opposes the theory of the state, in which membership is compulsory and in which law is administered by the use of force.

The difficulties involved in such a system are evident. The form of social organization proposed would be wholly inadequate to deal with the complex problems of the modern world. Its successful working would demand an intelligence and an unselfishness far beyond that ever attained by any group of imperfect human beings. Moreover, the anarchists err in believing that authority and liberty are contradictory, and that freedom can be secured by abolishing law and government. If authority is destroyed, the result is not perfect freedom for all, but the tyranny of the strong over the weak. History teaches that civilization, order, and peace are accomplished only by placing restraints upon the unlimited freedom of individuals. If the present type of state were destroyed, as the anarchists desire, their form of social organization would soon develop into a state. Only the form of government would be changed, and the use of restraint and force would again be necessary. Some form of law and government is an absolute necessity among civilized men. In so far as the anarchists point out evils in the present political organization of the world, their theory is valuable; but their own doctrines are based on false assumptions, and the solution they propose would be ineffective and impossible.

Individualism. Unlike the anarchist, the individualist[1] considers the state a necessity, though he views it as an evil, whose activities should be kept within the narrowest possible

[1] J. S. Mill, *On Liberty* (1859); W. Humboldt, *Sphere and Duties of the State*, translated by J. Coulthard (1854); A. Smith, *Wealth of Nations* (1776); H. Spencer; *Social Statics* (1850); *The Man versus the State* (1884); W Donisthorpe, *Individualism, a System of Politics* (1889); H. Laski, *Liberty in the Modern State* (1930).

bounds. It is necessary only because of the imperfections of mankind, and its sole duty is to protect the life, liberty and property of individuals from violence or fraud. The individualist considers every extension of the power of the state as a restriction of the sphere of individual freedom. The state is therefore justified in interference only for the purpose of protecting its citizens from worse interference on the part of other citizens, and is not justified in further activity, even for purposes admittedly beneficial. Its duty is to restrain and protect against selfish or thoughtless persons, not to take positive action for the promotion of the general good. This view is frequently accompanied by the belief that as the sense of order and morality becomes more advanced the need for state action will diminish, and that the ideal condition would be that in which the state no longer exists because no longer needed.

Individualists are not in agreement as to the exact functions which the state should undertake. In its extreme form the doctrine approaches that of the anarchists, On the other hand. there are many thinkers who, while placing chief emphasis on the rights of the individual and the full development of his powers, helieve that this can be best accomplished in some csses by state regulation and even by a limited amount of direct state action. They believe that the state is justified not only in maintaining its own existence and in protecting the life, liberty. and property of its citizens but also in undertaking such other functions as, under existing conditions, may be conducive to general welfare. This point of view, while resting on an individualistic basis, is modified by utilitarian and opportunistic considerations. It holds that the exercise of each function by the state must be determined by its results in promoting the best interests of individuals and of society. In this form the theory may be gradually modified toward the socialistic point of view.

The doctrine of individualism came into prominence in the latter part of the eighteenth century, as a reaction against the evils of governmental interference of that period and as a result of the prevailing belief in a natural law in the political, economic, and biological world, which should be allowed to work itself

out without man's interference. It served as a basis for the democratic revolutionary movements of the time and for the economic doctrines of the physiocrats and the free-traders. By the middle of the nineteenth century the individualist theory had been seriously undermined by the growth of socialistic ideas and by the reform movements which demanded state action. The theory of individualism assumed somewhat different aspects according as it was viewed in its ethical, political, economic, or scientific aspects ; but from all of them arguments were drawn favoring individual freedom and restricted state activity.

1. *Ethical.* Abstract conceptions of justice and of natural law based on right reason were used to support the theory of individualism. From this point of view it was argued that each man knew his own interests best and that the individual should bc let alone to develop his own powers and to realize the purpose of his existence. Restriction upon his freedom destroyed his self-reliance and initiative, weakened his character, and limited his possibilities of development. Over-government tended to crush individuality and to reduce men to a level of mediocre uniformity. Freedom alone enabled men to develop their faculties, strengthen their character, and achieve their highest civilization. Men were naturally free ; they had inherent rights which should be respected ; restrictions upon freedom resulted only in evil.

2. *Political.* The political doctrine of individualism arose from the social-contract theory, which was used to attack the theory of divine right in the contest between monarchy and democracy. The kings of the eighteenth century asserted that they were the agents of God on earth. As such they could do no wrong, and they assumed for the state wide and paternalistic powers of regulation and control over the actions of their peoples. The opponents of monarchy naturally wished to weaken the power of the system that they were attacking. Viewing the exercise of extensive governmental authority by an irresponsible monarch as an evil, they were led to regard all authority as an evil. They placed their emphasis on the individual and his rights, not on the state and its powers. According to their doctrine, men were originally

free and equal, possessing certain natural rights. The state was their deliberate and artificial creation by means of an agreement, or compact, among themselves. The purpose of the state was to protect and guarantee the rights of individuals. Accordingly, its functions should be limited to this negative purpose, and any extension of its authority beyond this field was a violation of the contract between people and government, from which the latter drew its existence and authority. Any interference with their natural rights justified the people in resisting a tyrannical or usurping state authority. Democracy and individualism arose together. Men desired to govern themselves, but they also wanted as little government as possible. They believed that the best government is that which governs least.

Once democracy was in the saddle, however, the attitude of the masses changed. Political power in the hands of the people was viewed with more favor than power in the hands of a king or a privileged class, and the people were willing to trust large powers to a government which they believed they controlled. As the nineteenth century progressed, Rousseau's theory of popular sovereignty and general will served as the basis for a rapid expansion of state activities for the purpose of promoting the general welfare. By the close of the century, socialism claimed to represent the democratic movement; and the people who, a century earlier, had feared government and wished to limit its activities to a minimum, were clamoring for legislation involving a wide exercise of the powers of state regulation and of state action to further social ends.[1]

Accordingly, modern supporters of individualism represent, to some extent, a reaction against the extreme theories of equality and democracy. They view the problem not from the standpoint of philosophic concepts of abstract justice or of natural rights but from a practical standpoint of the actual results accomplished by state action. They doubt the competency of the modern state to judge wisely the needs of society or to provide for them. They point out the inefficiency and extravagance of government, the incompetence of its officials,

[1] P. S. Richards, "The Rise and Fall of Individualism," in *Century*, January, 1928.

the red tape in its procedure, and the delay in its action. Many persons believe that the state is already overburdened with duties that it is ill-fitted to perform, and that there is a marked tendency toward overlegislation. They believe that many functions would be better accomplished if left to private, initiative, which has a more direct interest in the matter concerned and which is more likely to be progressive and enterprising. History and experience, they hold, teach that attempts by the state to legislate concerning the details of social and economic life fail in their purpose and act as obstacles to progress. The individualist attitude is upheld today by certain interests that wish to escape government regulation, by many persons who oppose governmental interference with their private lives and habits, by conservatives who fear the extension of socialist doctrines and practices, and by many thoughtful believers in democracy who fear that it will destroy itself by attempting more than it can successfully accomplish.

3. *Economic*. Individualism, as an economic principle, is based on the argument that free competition and unrestricted industry and commerce are more profitable than economic activities under government regulation or operation. This *laissez-faire* doctrine arose as a protest against the mercantile system of early modern states. with its paternalistic attitude toward industry and trade, and its purpose of increasing the national wealth, protecting home manufactures, and securing a favorable balance of foreign trade. Under this system national greatness, economic self-sufficiency, and a full treasury were aimed at, rather than the welfare of individual citizens. In the second half of the eighteenth century, the regulations and restrictions of the paternalistic governments had become increasingly burdensome, especially as economic conditions were changing ; and the doctrine of natural law and natural rights was applied to support the principle that the individual should exercise his economic activities with the least possible interference from the state. A "natural order" was believed to exist, whose arrangements were perfect, in contrast to the "positive order," whose laws were the human and imperfect rules of existing governments. This natural order, it was held. should be allowed to work itself out in the economic

world, without interference from the state. Enlightened self-interest would best realize both individual and public welfare.

This point of view, the opposite of mercantilism, was worked out by the physiocrats in France and by the school of writers that accompanied the Industrial Revolution and centered around Adam Smith in England. In France, the chief attention was given to the encouragement of agriculture ; in England, to the development of unrestricted foreign trade. In the latter country machine production was replacing hand labor, the factory system was destroying the restricted, domestic type of production, and transportation and commerce were undergoing rapid changes. England no longer feared competition, as she was able to produce manufactured goods more cheaply than her rivals. On the other hand, she was compelled to import food and raw materials, which she wished to buy in the cheapest markets. Consequently the existing system of government regulation, based on the conditions which existed before the industrial changes, grew steadily out of harmony with the new conditions and with England's economic interests. The economists argued that the free movement of capital, the free adjustment of prices on the basis of supply and demand, and the free movement of trade from place to place would lead to the best economic adjustment in accordance with the working of natural economic laws. Unrestricted competition would stimulate production, keep wages and prices at their normal level, prevent excessive rates of interest, increase national wealth, and promote individual and social welfare. These doctrines led to the repeal of many statutes regulating labor, industry, and commerce, and gave an impetus, in the first half of the nineteenth century, to the free-trade movement in Europe and in America. Private enterprise was encouraged, and state bounties and state-protected monopolies were destroyed. Later, the evils growing out of unrestricted competition, especially as they affected the laboring classes, and the obvious advantages of combination and the need for its regulation led to a renewed demand for economic legislation. Likewise, the competition among states for markets and the desire to develop their industry and to secure increased revenue led to a return to the system

of protective tariffs. At present the economic theory of individualism has been to a large extent replaced by socialistic doctrines which justify extensive state action, and a large part of modern legislation deals with economic questions.

4. *Scientific.* Some of the supporters of individualism argued that it was in harmony with the biologic theory of evolution. Nature's process was one of struggle for existence, resulting in the survival of the fittest. The result of this process was believed to be progress. Accordingly, interference by state action would impede natural development and do harm. Individuals should work out their destiny without governmental aid or control, in order that the fit should survive, the unfit be eliminated, and the best interests of society be furthered. Led by Herbert Spencer, this group of thinkers wished to limit the state, as one of the organs of society, to the performance of its essential functions only. Government was a necessary evil, whose activities would diminish in scope as civilization developed; and all extensions of state action led to injurious consequences.

In applying the biologic analogy, upholders of individualism fail to consider the essential difference between mankind and the lower forms of life. While the latter are at the mercy of their environment and are transformed by it, man changes his environment and to a large extent controls his own development. He may thus to some extent avoid the injustice and waste which the process of natural selection otherwise necessitates. Besides, since the survival of the fittest means only the fittest under given circumstances and not necessarily the survival of the best, as judged by any rational standard, man, by improving his conditions and directing his course of evolution, may make the fittest a far more desirable type. Natural evolution results in retrogression as well as in progress. Hence collective activity, instead of being an interference with a beneficent law, may remove the waste of competition, hasten progress, and make possible a higher type of individual and society.

In conclusion, the postulates of individualism may be stated as follows: Self-interest is a universal principle in human nature and, in the long run, each individual knows his own interests best and, in the absence of arbitrary restrictions, is

sure to follow them. If external restraint is removed, free competition will result, and such free competition always develops the highest human possibilities, by enabling each individual to do that for which he is best fitted, by eliminating unfit elements, and thus advancing the welfare of all. Government and liberty are viewed as contradictory terms, and every assumption of authority by the state is considered an infringement upon individual freedom. From these premises it is argued that men have a right to be let alone, that it pays to let them alone, and that state action, beyond a narrow and necessary range of functions, is always injurious.

Against these arguments it may be stated that altruism, as well as self-interest, is a motive in human action, and that in some cases the persons concerned do not know their own interests and must be protected by collective action. Competition does not persist unless the competitors are comparatively equal in strength. Frequently governmental interference, by checking the aggression of the stronger, makes competition possible instead of destroying it. Collective activity may also prevent the slow and wasteful action of natural evolution when this produces undesirable results in human affairs, or may bring its desirable features into operation if some impeding cause has interfered. History shows that the state is not always an evil, but that much human progress has resulted from wise state action. Its function is not merely that of repressive regulation ; it may also foster and promote the general good. Overgovernment may be an evil, but government in itself is not only a necessity but may be a positive good. Instead of destroying freedom, the authority of the state is necessary to create and to protect it. The rights of all are widened by wise restriction upon the free actions of each. While useful in emphasizing the value of freedom and self-reliance and the injurious effects of excessive state interference, the theory of individualism does not furnish, under modern conditions, a satisfactory basis for state functions. As civilization progresses, men become increasingly dependent upon one another, and all indications point to growing demands for state action. Control and regulation are necessary in the complex life of the modern world.

State Regulation. The theory of state regulation occupies an intermediate ground between that which desires a minimum and that which desires a maximum of state activity. It believes that, for many purposes, the individual should be free from state control. It favors, in general, the private ownership of property and the private control of business. At the same time, it places first the welfare of the whole people, and realizes that a considerable degree of state interference and regulation may be needed to accomplish this end. Depending upon the social and economic conditions that exist, it justifies state ownership and operation of such business as cannot be safely left in private hands or as can be more effectively managed by public control. It approves such legislation as is needed to regulate the lives and activities of the people, and the use and management of their property, for the general good. It aims to protect all classes in the state against injustice and exploitation. The extent of state interference may vary as conditions change, but in each case state interference is to be judged by its results. This theory underlies the governmental activities of the United States and, with stronger socialistic tendencies, in Great Britain. Because of the growing complexity of modern life, and because of the increasing demand of the people for legislation in the public interest, the tendency of the past century has been toward more extensive state regulation under this theory.

Socialism. Opposed to the theory of individualism stands a group of doctrines that favor collective control and a wide extension of public activities. While believing in individual freedom, the supporters of these theories hold that it can be better secured under social regulation than by unrestricted individual competition. They believe that the instruments of production should be owned and operated and their products distributed by the organized community. State socialists would organize the community as a political body, make it the owner and manager of land, capital, and the means of production, and extend its activities to all undertakings that would promote equality and social welfare. They wish to expand the activities of government not for the purpose of increasing the importance of the state but because they believe that in this way only can

each individual be assured of justice and freedom. In most cases they propose radical alterations in the organization of the state, and view it as a fraternal, coöperative commonwealth rather than as a paternal, political unit. On the other hand, the communists look forward to the disappearance of the state, which they associate with the capitalist system. Their ideal is that the whole body of the people, organized for productive purposes, but not armed with legal coercive power, should own and operate the means of production. Extreme communists would abolish private property not only in land and the means of production but in all things. In general, state socialists look to the gradual and peaceful introduction of their system ; communists usually favor revolutionary action, by which the working classes will take over the control of the political organization of society. The result of this revolution would be the creation of a new type of social organization, the state in a new form and under a different name. All socialist theories would enormously expand the activities of whatever system of social organization they propose to create.

The theory of socialism is not new. Among primitive peoples much property was held in common, and the life of the people was under extensive regulation. Ancient Sparta was organised under a strict re'gime of state socialism. The doctrines of the early Christian church contained many socialistic elements, and the medieval system of landholding and that of trade guilds and the practices of the monastic orders contained traces of the same idea. The peasant revolts that followed the Protestant Reformation were distinctly socialistic in nature. Idealistic schemes of social reconstruction along socialist lines have been proposed by many great thinkers[1] since the time of Plato. In the early years of the nineteenth century numerous proposals[2] were put forward for social and economic recons-

[1] Plato, *Republic* ; More, *Utopia* (1516) : Bacon, *New Atlantis* (1629) ; Campanella, *City of the Sun* (1623) ; Bellamy, *Looking Backward* (1887).

[2] R. Owen, *A New View of Society* (1812) ; W. Thompson, *Inquiry into the Principles of the Distribution of Wealth Most Conducive to Human Happiness* (1824) ; H. de Saint-Simon, *L'Industrie* (1817) ; *Le Nouveau Christianisme* (1825) ; C, Fourier, *Nouveau Monde industriel et societaire* (1829) ; E. Cabet, *Voyage en Icarie* (1839) ; L. Blane, *Organisation du travail* (1841). Later utopias include F. Bellamy, *Looking Backward* (1887) ;

truction, and were followed by the establishment of communities in which socialist experiments were put into practice. Many of these reforms looked to the state to give general application to their proposals. Modern socialism is based largely on the doctrines of Karl Marx,[1] and claims to be scientific, in that it is based on an analysis and understanding of the true nature of industrial society which the earlier socialists lacked.

Marx believed that men's actions at all times were dominated by economic motives, which determined the nature of social and political organization ; also that there has been a constant struggle between economic classes and that the class which secures economic power organizes and controls the state to protect and advance its own interests, History is a record of this class struggle. All wealth, Marx believed, was produced by labor, but only a part of it was secured by the laborers who produced it. The remainder was appropriated, in the form of surplus value, by the capitalist class, who exploited the laborers. Capital tended to be concentrated in the hands of a few ; the proletariat constantly increased in numbers. As the workers became conscious of their power, they would unite as a class, wrest power from the propertied class, establish common ownership and operation of the means of production, do away with private profits, and distribute the entire product of labor among the workers who created it. While Marx believed that an inevitable law operated in historical development, he also taught that the exploited class should exert itself to hasten the transition from one economic stage to the next. This transition was usually marked by violence on the part of the oppressed ; hence history was a series of revolutions. According to Marx, each economic class in power creates the forces which ultimately destroy it : the overthrow comes by revolutionary action on the part of the new class which comes into economic and political power. The next stage in history would see capitalism replaced by communism. The workers

W. Morris, *News from Nowhere* (1892) ; W. D. Howells, *A Traveller from Altruia* (1894) ; S. Butler, *A Modern Utopia* (1905) ; G. Wallas, *The Great Society* (1914).

[1] *The Communist Manifesto*, prepared in collaboration with F. Engels (1848) ; *Das Kapital* (1867).

would seize political power, and use the state as a means for bringing the communist re'gime into operation. Once this was accomplished, however, the need for the state would disappear, and nonpolitical organs for the direction and control of the production and distribution of economic goods would be created. Class distinctions would be destroyed, all would be workers, and the class struggles would come to an end. Political powers, Marx believed, was the organized power of one class to oppress another. If there were no ruling class, there would be established "an association in which the free development of each is the condition for the free development of all." Workingmen of all countries were urged to unite, and the movement was given an international basis.

From these doctrines modern socialist movements started. Some look forward to socialism as an ideal to be realized by gradually extending governmental functions and by increasing public control over great industrial combinations. They are willing to use the state and to accomplish their reforms step by step. Others oppose any compromise, and favor an uprising of the masses, who will establish a socialist system by overthrowing existing governments and cenfiscating property in private hands. Some believe that this may be accomplished peacefully and voluntarily, because of a general recognition of the evils of the present system ; others believe that a violent revolution alone can accomplish their purpose. Neither are socialists agreed as to the method of distributing income among the members of a socialist society. Some believe that, under the economies and improved production of socialism, distribution would present no difficulties because of the abundance of wealth. Others recommend that everything be held in common, each producing according to his capacity and receiving according to his need. Another group advocates equality of wages, sometimes with the proviso that all persons perform equal amounts of labor, according to a system of units of labor-time, based on the attractiveness or repulsiveness of the occupation. Others would allow officials, chosen by the workers and responsible to them, to assign laborers to their duties when necessary and to arrange wages.

In general, socialist theory has been critical rather than con-

structive, and has given little attention to the structural organization of society that is to replace the existing state. The present political state, the socialists believe, is based on force and exists for the protection of the economic interests of capitalists. Their system, however, would require an elaborate organization for the purpose of carrying on production in a scientific and rational manner and for distributing the proceeds among the workers. The functions performed by this organization would be more elaborate than those performed by the governments they oppose. They argue, however, that political power would not be needed, since the aim of the socialist organization would be the advancement of the interests of the entire society composed of a single class; that its directions would be voluntarily obeyed by all, so that obedience would not need to be enforced; and that those who operate the machinery would not constitute a governing class, but would be workers performing public functions as a part of the unified community. Police and courts would not be needed if there were no laws imposed upon men by an authority above their control; military force would not be needed if the world were organized as an international unit.

Among other advantages it is asserted that socialism would remedy the wastefulness and the injustice in the existing economic system. Its supporters believe that, under scientific and rational control, the economic needs of the community could be accurately estimated and the available land, labor, and capital apportioned, so that the necessary quantity of each kind of goods would be produced. Unnecessary competition and duplication would be prevented, the expenses of advertising and competitive selling would be avoided, and the production of goods that are harmful would be forbidden. The resultant saving in productive power could be applied either to increase the amount of goods produced or to shorten the hours of labor, or both. The present system of haphazard competitive production and selling they believe to be extravagant and wasteful, to result in low wages and unemployment. Under a regulated coöperative system these evils would disappear.

The inequalities of wealth and opportunity under the capi-

talist system are particularly rspugnant to socialists. They argue that, under private ownership of land and the increasing use of machinery and combination of capital, the laborer, unable to apply himself directly to the means of production, must make a forced bargain with landlord or capitalist ; that under this system the laborer receives far less than his proper share of the product, since landlords and capitalists receive enormous and undeserved rent, interest, and profits. Speculators and middlemen further reduce the laborer's share. They believe that land and accumulated capital should belong to all, not to a privileged few, and that income should be equalized by protecting the weak against exploitation. Society, they believe, is an organic unit, and the welfare of all is more important than that of a few. Hence regulation in the interest of the general good is justified.

From a moral standpoint, socialists argue that the capitalist system lowers individual character, encourages dishonesty and unfairness, and emphasizes material success judged in terms of wealth. A socialist re'gime would create a more desirable type of character and a better standard of values. Instead of depending upon self-interest as a spur to industrial activity, it would rely upon the love of activity for its own sake, the desire to contribute to the common good, the sense of duty in the performance of tasks that are largely voluntary, and the ambition to win social esteem through conspicuous social service. Altruism rather than selfishness would dominate men's actions, and a harmonious development of character would result. Socialists argue that modern democracy has been applied only in the political field. They would extend it also to economic affairs. The fact that men have the right to vote is of little value if wide differences in wealth give influence and power to a small class. Equality in property, they believe, is essential to equality in political rights ; hence socialism is the economic complement of democracy.

Without discussing the economic fallacy of socialism in ascribing an undue share of production to labor alone, some of the practical objections to the system may be pointed out. The difficulties of administration would be enormous. Such questions as the apportionment of laborers among the various

departments of industry, the assignment of value to products and labor, the quantity of goods to be produced, the relative proportion of capital goods and consumers' goods, and the distribution of income—all of which are now regulated, imperfectly to be sure, by the law of demand and supply—are complex problems whose artificial adjustment would require administrative ability of the highest order. Socialists overestimate the capacity and efficiency of the state. Experience shows that state action is slow and mechanical, lacking in initiative and in willingness to experiment. If the incentive of competition and the hope of reward were removed, improvements would be retarded, individual initiative would be checked, and in the attempt to remove inequalities there would be danger of reducing life to the dull uniformity of stagnation. Under state control, government managers would lack interest, production would diminish, and all would be reduced to a low level of poverty.

Serious dangers would arise because of the opportunities for corruption, intrigue, and personal spite in a socialist state. The connection at present existing between business and politics is the source of many evils in government ; strengthening that connection until they become practically identical would, under present moral conditions, scarcely tend toward improvement. Against the power of bosses, in a socialist state, there would be little possibility of resistance and little chance of fair play. In opposition to the socialist claim that their system is democratic, their opponents argue that it results inevitably in despotism and dictatorship. A government exercising such wide powers as socialism demands cannot remain under the control of the people, but tends to become bureaucratic and irresponsible. Under socialism society would be regimented and disciplined, individual freedom would disappear, a government with inquisitorial and despotic power would reduce the individual to virtual slavery.

Socialists are inclined to be too optimistic in underrating the psychological obstacles to their plan. The average man is neither so inclined to work nor so zealous for general welfare as socialism demands. Neither is the sense of duty sufficiently developed, nor public opinion, on which social esteem must

perpetuates injustice and permits the exploitation of the worker. They believe that the source of political authority is economic power, and that popular sovereignty is impossible unless the workers control the means of production. They oppose all forms of political government, and favor a non-coercive organization based on the productive structure of the economic society. Believing that control by law destroys individual initiative, they refuse active participation in politics, favoring direct economic action rather than political pressure. They believe that gradual disintegration of government is inevitable and that, as a class consciousness grows, a series of revolutions will culminate in the final general strike that will destroy the state and secure for the workers control of the major industries, which they will thenceforth own and operate. Through their unions they will exercise such general or political control as may be necessary. Meantime they favor sabotage, which includes deliberate reduction of output, destruction of machinery and material, and the production of poor work.

While syndicalist theory is destructive rather than constructive, it gives some attention to the form of social organization that is desired. Local workers in a trade, organized into a syndicate, will control that trade ; but capital will be owned in common by all the syndicates, which are to be grouped into national federations according to trades. The various syndicates in a community will be affiliated through a local labor exchange, which will exercise judicial and police powers. A national congress will be composed of delegates from the local labor exchanges and the national trade federations. The characteristic features of the proposed system are its extreme decentralization and the slight control which it is expected to exert. In its separation of powers along functional lines, it represents the pluralistic tendency in modern theory. In its relaxation of control, it represents the movement toward anarchistic individualism. In its use of economic units as the basis of organization, it resembles the systems of guild socialism and the soviet. Its ideal is economic federalism and workers' control, the substitution of a proletarian for what is now considered to be a capitalistic government.

2. *Guild socialism.* Guild socialism, which has its chief strength in England,[1] combines the state-ownership concept of the socialists and the idea of producers' control urged by the syndicalists. It aims to separate political and economic functions. While syndicalism is concerned with the interests of producers only, guild socialism is interested in the welfare of both producers and consumers. On this theory the workers, organized into occupational unions, or guilds, should control the work of production ; the consumers, represented by the state, should own the means of production. To this is added the pluralistic theory of sovereignty based upon function. Emphasizing the diverse interests of consumers and producers, guild socialists argue that it is impossible to secure adequate representation and influence for both in the parliaments of the political state as it is now organized. Believing that economic dominance finds its expression in political dominance, they view existing governments as democratic in form, but as controlled, in reality, by the capitalist classes. Guild socialists believe that industry, religion, education, and other essential activities should each have its own organization and control its own affairs ; and that the state should interfere only as a last resort, or should stand on a par with other natural groups, with final authority to adjust disputes resting in a body that represents all essential interests. Like anarchism and syndicalism, guild socialism manifests a strong dislike of the state especially in its control of economic interests. It opposes state socialism, believing that it would result in a bureaucratic and undemocratic system. It prefers to set up a decentralized organization, in which the state looks after such matters as public conduct, international relations, education, and public health. Autonomous and coöperating occupational groups will determine hours and conditions of labor, wages, and prices. There will thus be established two major democracies, one economic, one political, but neither completely sovereign.

The state socialists believe that a socialist system will be evolved out of the tendency to concentrate capital ; the guild socialists believe that it will develop out of reorganized and

[1] G. D. H. Cole, *Self Government in Industry* (1917); *Social Theory* (1920) ; S. G. Hobson, *National Guilds* (1919).

more powerful labor unions, with the shop unit an important basis of representation and a national guild congress the supreme industrial body. From one point of view, guild socialism represents a reaction against the large-scale machine industry of the present day, as well as against the state. It looks back to the medieval period, with its small, decentralized, handicraft industry, which developed the personality of the workers and made possible pride in workmanship. Guild socialists agree that control over production must be taken from the state and placed in the hands of economic groups. They agree also that the state, somewhat reorganized, perhaps, to correspond with natural regional divisions, must remain as one of the essential institutions, performing certain services. On the relation of the state to the industrial organizations they differ. Some would recognize the ultimate sovereignty of the state over the guilds, allowing it to adjust conflicts among the producers' crafts and to intervene in industrial affairs in exceptional cases when demanded by public interest. Others believe that the state, as the supreme territorial association, represents the interests of consumers, while a congress of national guilds, the supreme occupational association, should represent the interests of producers. Between these a federal adjustment should be made, with disputes settled by a body representing both producers and consumers. Under this system the means of coercion, including the judiciary and the police, would be under the control of the coördinating body, Guild socialists argue that the state should not possess industrial sovereignty, and that the separation of governmental powers should be along functional lines. In the later writings of this group, there has been a tendency to shift emphasis from national to local adjustments between producers and consumers and to favor the separate representation of the various interests within the state, thus replacing the state by a federation of natural associations.

While the guild socialists, in their effort to destroy the monistic sovereignty of the state, have not been able to define clearly the respective fields of the various social groups or to make satisfactory provision for a superior coördinating authority to adjust conflicts among them, they have contributed

ideas of value. At a time of increasing governmental control of industry, they sound a warning against the dangers of bureaucratic power and suggest possible methods of self-government in industry. They attack the tendency toward centralization in government, favoring local and regional autonomy. They propose modifications of the basis of representation, preferring functional and occupational representation to that of territorial population groups. Their interest in developing initiative and personality in the worker is also of fundamental importance in a democracy. Guild socialism wishes to decentralize the powers of an omnipotent sovereign state in order to save the individual from institutional tyranny. In this process it welcomes the aid of the various associations and communities that result from natural human interests. It attempts to devise a social machinery that will adequately represent the various interests of men in a complex modern society. Whether its plan would result in an anarchy of groups, or whether the great industrial organization would become a new form of all powerful sovereign, as remote from popular control and as autocratic as the state which it would replace, are pertinent questions. What the guild socialists really propose is a reorganization of the state and a redistribution of its powers, rather than the destruction of the state itself. The attempt to assign international affairs to the political government and the control of economic interests to the guilds seems impossible in a world where economic interests and international problems are closely related.

3. *Communism.* The theory of communism[1] is especially important because of its practical application in present-day Russia and because of the attempts to extend this doctrine into other countries. It represents the extreme form of modern socialism. It teaches that control should be in the hands of the working classes, but that such control cannot be gained by political action or by peaceful means, since the state is dominated by capitalists through their control of economic power and of the means of influencing public opinion. Hence

[1] N. Lenin, *The State and Revolution* (1919) ; N. Trotzky, *Defense of Terrorism* (1921) ; N. Bukharin, *Programme of the World Revolution* (1920) ; L. Kameneff, *The Dictatorship of the Proletariat* (1920).

it urges the workers to seize the state by revolution and to use it as an agent to crush the remnants of capitalism. Through the dictatorship of the proletariat a communist system is to be instituted. This is to be accomplished by debarring from voting or holding office all attached to the capitalist class, by using force to check any attempt to restore capitalism, by assigning to labor all former capitalists, by preventing any party of opposition and any criticism of communist doctrines, and by drilling the younger generation in the principles of communism. By these means class distinctions will be abolished, all will become workers, and the political state will wither away. Temporarily an organized minority may exercise control; ultimately the majority, organized along lines of economic function and on the basis of equality, will work according to their abilities, and receive according to their services; and the need for force is expected to disappear. Social control will be vested in the people regarded as a single producing and consuming class. Communist theory substitutes the international for the national point of view, believing in the solidarity of interests of the working people in all nations. In practice Russian policy is becoming increasingly nationalistic and militaristic.

The revolutionary leaders who established the soviet form of government in Russia believed[1] that they were finally putting into effect the principles laid down by Marx three quarters of a century earlier, though they differed somewhat from the earlier theory as to the tactics to be used in securing control of government and industry during the transitional period. It was their aim to "sum up the practical revolutionary experience of the working class, to cleanse the movement of its admixtures of opportunism and social patriotism, and to unite the forces of all the true revolutionary proletarian parties in order to further and hasten the complete victory of the communist revolution." They placed chief reliance on a conscious, militant, revolutionary minority of the workers, especially in the city industries, organized into soviets, or councils, of workers, of peasants and of soldiers. These should

[1] See the *Manifesto*, issued by the First Congress of the Communist International, March, 1919.

forcibly seize authority, shatter the old political organization, establish a proletarian dictatorship, destroy the capitalist class, and guide the peasants and the middle class in the work of social and economic reconstruction.

The political institutions devised by the Bolshevists in 1918 were considered unsuitable for the Soviet State which had been transformed by the five-year plans, the collectivization of agriculture, the liquidation of internal opposition, and the resumption of relations with the outside world. Consequently, a new constitution was promulgated in 1936. Under the new constitution members of all Soviets are chosen by the electors "on the basis of universal, direct and equal suffrage by secret ballot." The highest organ of state authority in the U.S.S.R. is the Supreme Soviet, which consists of two chambers: the Soviet of the Union, elected on the basis of one deputy for every 300,000 of the population, and the Soviet of Nationalities, elected on the basis of twenty-five deputies from each Union Republic, eleven from each Autonomous Republic, five from each Autonomous Region, and one from each National Area. The Supreme Soviet elects a Presidium, with a President and sixteen Vice Presidents, which is accountable to the Supreme Soviet for all its activities. The Supreme Soviet also appoints the Government of the U.S.S.R., namely the Council of People's Commissars, which consists of twenty-five Union Commissariats and fifteen Union-Republican Commissariats, also accountable to the Supreme Soviet of the U.S.S.R. In each Republic a Supreme Soviet is chosen by the citizens to exercise the powers reserved to the Republics under the Constitution. The Supreme Soviet of a Republic elects its own Presidium and Council of People's Commissars. The organ of local authority in each territory, region, autonomous region, area, district, city, and rural locality is a Soviet of Working People's Deputies elected by the citizens of the respective area and presided over by an Executive Committee chosen by the Soviet itself. Justice is administered by the Supreme Court of the U.S.S.R. and Supreme Courts of the Republics and Regions, elected by their respective Soviets, and the People's Courts, elected by the citizens of the district. Supreme supervisory power over

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the strict execution of the laws is vested in the Procurators of the U.S.S.R. and of the Republics. "Equality of rights of citizens of the U.S.S.R., irrespective of their nationality or race, in all spheres of economic, state, cultural, social and political life" is provided for in the fundamental laws. Like its predecessors, the new Soviet constitution does not apply the principle of separation of powers. Although the constitution vests legislative power in the Supreme Soviets and executive power in the "Governments," the "Governments" are appointed by as well as accountable and responsible to the Soviets. The Soviet system more closely approximates the parliamentary form of government, although one of the essential features of the parliamentary system—the resignation of the executive upon losing the confidence of the legislature—has not, as yet, been applied under the Soviet system ; nor is the U.S.S.R. a truly federal system. Although the Republics are allowed to exercise those powers not granted to the U.S.S.R., as well as the theoretical right secede, the overwhelming authority vested in the U.S.S.R. makes federalism meaningless. Further centralization is achieved by the dominant position of the Communist party in both spheres of authority.

4. *Fascism.* A more recent theory of the state was the Fascist conception,[1] which was developed by Italian writers and given practical application in the Italian Fascist state, Certain features of this doctrine later exerted considerable influence in neighboring states, especially Austria and Germany. The Fascists attacked the liberal and democratic theories of the nineteenth century, with their emphasis on equality and individualism and their belief that the purpose of the state is to promote the welfare of its individual members. Fascist theory was strongly influenced by the biological conception of organic unity and applied this idea to the state. To Fascists the state was more than a collection of individuals. It had a life and a unity of its own ; its existence and its ends were more important than those of its individual members, and in case of conflict the interests of the individual

[1] J. S. Barnes, *The Universal Aspects of Fascism* ; A. Rocco, *The Political Doctrine of Fascism* ; P. Gorgolini, *The Fascist Movement in Italian Life.*

must be subordinated to those of the state. Fascist theory emphasized the historical development and the continuous existence of the state. Its preservation, expansion, and improvement must receive first consideration. The duty of the individual to the state, rather than the rights of the individual to freedom, was important. This emphasis on duty was considered the highest ethical value of Fascism. The necessity of sacrifice on the part of the individual in case of state need formed the justification for war, which the Fascists viewed as an eternal law of mankind. Fascist theory closely approached the transcendental conception of the state as worked out by Hegel and the other German idealists. Some of its supporters even showed traces of the divine-right doctrine in their glorification of the state.

The Fascist ideal was a state organized to promote efficiency, a disciplined people producing to the maximum in accordance with a program which corresponded to the interests of the national organism. It was the duty of the citizen to subordinate his interests to those of the state, and the right of the state, if necessary, to compel him to do so.

Fascists rejected the theory of democracy and popular sovereignty. For them the state, not the people, was the possessor of sovereignty. They had no confidence in the political ability of the masses or in the control of a public opinion or a general will. They denied that the people have any inherent or inalienable right to determine the form of their government or to take part in it or to dictate its policies. They believed that government should be in the hands of a few strong and able men, wisely selected and that the masses, misled by schemers and demagogues, are not competent to choose wisely. Hence they opposed parliamentary government based on a wide electorate. Individuals should be called upon to take part in political life in proportion to the importance they assume in the life of the state, and in a form of grouping determined by considerations of state welfare. Fascists believed that this is best secured by functional organization, by the establishment of trade-unions, employers' associations, coöperative bodies, guilds, and the like, such as those proposed by the theories of syndicalism and guild socialism. Fascists

repudiated the socialist doctrine of class struggle. In the Fascist state, capital and labor must coöperate, under compulsion if necessary, for the good of the state. This economic organization was imposed upon the people by the state, and was used as a basis for the selection of representatives to a national legislative body. Fascist doctrine, however, placed chief emphasis on executive and administrative officials, which form the real government. The legislative organs were expected to advise and collaborate with the executive, rather than to rule the nation. Fascists agreed with Communists that only one party should be tolerated in the state, that the leaders of the party should control the government, that criticism of its policies should not be permitted, and that the state should control the educational system and the means of influencing public opinion for the purpose of impressing Fascist ideas upon the people, especially upon the coming generation. Fascist theory combined the idea of social solidarity and public service, as urged by Duguit,[1] with the syndicalist form of economic organization for the purpose of maximum economic production. It justified the use of fear and force, and used the pragmatic test of efficiency as the only useful standard. Work, discipline, unity, and action were Fascist slogans.

Fascist theory opposed the doctrine of internationalism and exalted the national state as an independent and organized unit, the natural result of historical growth. The highest form of state was one in which political unity coincided with ethnic and geographic unity and a community of historical tradition. The duty of the state was to itself, not to the world as a whole. It must promote its strength and realize its legitimate national development. If a vigorous and prolific state needs room for its people, or needs raw materials that it cannot produce, a policy of expansion was justified. Hence Fascist theory tended to be militaristic and imperialistic, to view war as sometimes necessary and desirable, to emphasize the aspects of power and will in the state, and to apply to state action ethical standards of conduct different from those that prevail among individuals.

Fascism derived many of its principles from earlier Italian

[1] See above, Chap. IX, p. 143.

writers. It looked back to St. Thomas Aquinas, who emphasized the necessity of unity in the political field and pointed out the dangers of rule by the many and the advantages of rule by one. It drew upon the ideas of Vico, who attacked the natural-law philosophers of the eighteenth century and pointed out the value of history and experience, criticized democracy, subordinated private to public interests, and asserted that right was of no avail without force. It owed much to the pragmatic philosophy of B. Croce,[1] with his emphasis on the living force of history and his praise of great men of courage and daring. Fascists constantly appealed to the Roman tradition for the purpose of stimulating national pride and patriotism. Their doctrine incorporated the ideals of Mazzini,[2] with his emphasis on nationalism and on the duty of sacrifice and his appeal to the ardent ideals of youth. Fascists had a special admiration for Machiavelli, partly because he was an Italian and sought to promote Italian unity, partly because of his practical and realistic attitude toward politics and of his belief in the use of force and the value of expansion, but especially because he gave such a high place to the state. Signor Rocco, one of the leading apologists of Fascism, says :

> His writings, an inexhaustible mine of practical remarks and precious observations, reveal dominant in him the state idea, no longer abstract but in the full historical concreteness of the national life. Machiavelli therefore is not only the greatest of modern political writers ; he is also the greatest of our countrymen in full possession of a national Italian consciousness.[3]

5. *National Socialism.* Influenced somewhat by the Fascist doctrines of Italy, but mainly by various lines of thought already existing in Germany, the theory of National Socialism (*Nazism*) was developed in Germany and put into operation during the regime of Adolf Hitler.[4] The desire of Germany to avenge her defeat in the First World War, the weakness of the Weimar Republic, and the world-wide economic depression gave impetus to the new movement. Nazi theory favored a

[1] *That Which is Living and That Which is Dead in the Philosophy of Hegel* ; *Historic Materialism of Karl Marx.*
[2] *Manifesto of Young Italy* (1831).
[3] *The Political Doctrine of Fascism*, in *International Conciliation Pamphlets*, No. 223, pp. 411-412.
[4] *Mein Kampf* (1925).

totalitarian state in which every individual and association was subordinated to national interests under a centralized government directed by a strong leader (*Fuhrer*). The economic system was planned by the state, with employment guaranteed and strikes forbidden. While property was left mainly under private ownership, control by the state of its use and profits was extensive.

As Fascism looked back to the grandeur of Rome, Nazism revived the ancient tribal ideas of the Germanic peoples. It viewed Christianity, with its emphasis on humility and brotherly love, as a weak religion, and favored the war gods of early Germanic myths. Especially hostile to the Jews, Nazism taught the superiority of the Aryan Germans and their right to rule or to destroy inferior people. Following the tribal doctrine of the blood bond, it held that Germans, wherever they might live, were members of the German nation and owed allegiance to it. Need for living-room (*Lebensraum*) necessitated expansion ; small states had no rights ; military power was essential ; and war was the supreme expression of the organic national state. Pacifism and internationalism were especially opposed.

The Nazi theory despised democracy, with its competing parties and legislative supremacy. It allowed only one party, composed of the *elite*, forbade criticism or opposition to the ruling group, and emphasized executive control in the hands of a supreme dictator. Elections were held merely to register approval of the candidates and policies of the government, and laws were issued in the form of executive decrees. By indoctrination of youth, elaborate propaganda, and control by a well-organized police it aimed at unity of thought and unquestioning obedience. Women were delegated to a position of inferiority and urged to bear children to add numbers to the superior race and to strengthen the military power of the state.

Certain differences and similarities may be noted in the theories of communism and of Fascism-Nazism. They are unlike in their attitude to private property, though both favor a state-planned economy. They differ in their attitude to women and to inferior peoples ; communism favored equality of the sexes and of races and of nationalities. Fascism and Nazism

look back to the history and ideas of their past ; communism, at first, ignored the past and began with the idea of a new order. Both Nazism and communism, however, are distinctly hostile to religion and to political democracy. The political organization of both is essentially similar, consisting of a strong executive head, a centralized governmental system, and a single party ; and both utilize youth organizations, propaganda, and a police system to create unity of belief and to enforce strict obedience. While communism is essentially internationalist in its outlook, Fascism and Nazism are strongly nationalist in their point of view. In recent years, communism, as applied in the Soviet Union, has also become more nationalistic, more militaristic, and more imperialistic in its practices. The "withering away of the state," prophesied by Marx, is not in evidence.

Conclusion. These newer theories of state organization and function represent certain interesting and important tendencies in contemporary political thought. In some respects they show striking contradictions. Some view the problem in its international aspects and would diminish the importance of separate and independent states in the interests of world unity. Others lay stress on the national state and oppose international organization or control. Some would strengthen the control of the state internally ; others would destroy the state or weaken it by dividing its functions among other forms of social organization. All of them show a reaction against the form of political democracy and of territorial representation according to population which was considered the great achievement of the nineteenth century. Against this appear, on the one hand, communistic doctrines, which aim at a further expansion of authority toward the goal of economic equality, and, on the other hand, Fascist doctrines, which are anti-democratic and aim at efficiency and rule by selected experts. All agree in organizing the state, to some extent at least, along lines of economic function and in giving to the economic structure a large degree of control over the economic activities of society.

This suggests the most important aspect of recent theory : the struggle between economic and political power in the modern state. Church and state competed for supremacy in the medieval period, and that issue was settled when each found its

proper field. No such solution is possible in the present controversy, since economics and politics cannot be separated, each constantly acting and reacting on the other. In their external relations, states use their political power to accomplish their economic aims; but political frontiers are not coterminous with economic frontiers, and confusion results. In its internal activities the state cannot ignore the economic field, since many of its aspects demand regulation which only law can secure. The state properly intervenes to "uphold social standards, to prevent exploitation and manifest in justice, to remove the needless hazards of the economic struggle, to assure and advance the general interest against the carelessness or selfishness of particular groups, to control monopolies so that the public may be protected against their exactions, to see that the future well-being of the country is not jeopardized by the pursuit of immediate gains."[1] The great internal struggles of modern states are concerned with the problem of the nature and extent of state control over the economic order.

Even less can economic forces ignore the state. On the contrary, they are always exerting an influence upon its government. The nature and amount of taxes are important concerns of all economic classes, Economic interests that are unequal and opposed constantly appeal to the state for aid. Workers desiring better conditions of labor or shorter hours or higher wages, manufacturers desiring protective tariffs or protection against labor unions, consumers opposing monopoly prices,—all are anxious to control the policy of the government for the purpose of securing their aims. The great cleavages in modern society are economic, and from them political parties derive their vitality. The fact that the centers of economic and of political power do not coincide in modern states creates the chief difficulty. Democracy gives to the working classes preponderant voting power, but it does not give them corresponding control over the wealth of the country. Consequently there results, on the one hand, the effort of the workers to use their political power to secure more equal distribution of wealth and, on the other hand, the effort of those in possession of economic power to control public opinion, to dominate the government

[1] R. M. MacIver. *The Modern State*, p. 297.

behind the scenes, or to attack democracy and urge the efficient rule of a bureaucratic administrative state. Recent development in political theory centers in attempts to combine political and economic power, in the hope that unification of political and economic interests will remove the conflict between them. To what extent this is possible or desirable is a much disputed question. The present trend in that direction is, however, apparent. The economic organization is being utilized to an increasing degree as a legal part of the governmental system in many states. Modern states have abandoned the theory of *laissez faire* and are using their political power to improve the conditions of the masses, to establish minimum standards, and to narrow the economic gap that separates the classes. If this process continues, the cleavage between capital and labor will be lessened, and the economic order will be more unified. What form the state will take in the new system of society is a question that only the future can answer.

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PART V . THE RELATION OF STATE TO STATE

CHAPTER XXIII

INTERNATIONAL RELATIONS

OUTLINE

Nature of International Relations
Influences on International Relations
1. Geographic factors
2. Population factors
3. Psychological factors
4. Historical factors
5. Religious factors
6. Cultural factors
7. Economic factors
8. Mechanical factors
9. Military factors
10. Governmental factors

Conduct of International Relations

Nature of International Relations. Political science is concerned not only with the internal organization and functions of the state but also with the relations of states to one another.[1] The activities that affect the relations among states may be carried on either by private citizens and corporations or by the authorized public agents or governments of states. In the former case, the interest of the state is indirect, and it may or may not regulate the actions or safeguard the interests of citizens in their extraterritorial activities. A state may restrict or prohibit immigration and emigration. It may demand passports from aliens traveling or residing in its territory. It may interfere to protect the lives and property of its citizens abroad, especially in the less civilized parts of the earth. It may color the news from other lands and may further active propaganda in the information sent out from its territory. It may even

[1] P. B. Potter, "Political Science in the International Field," in *American Political Science Review*, August, 1923.

make political capital of the work of its missionaries or investors and establish spheres of influence in undeveloped regions. The foreign commercial activities of its individuals are of especial interest to the state. Because of their influence on national wealth and prosperity, and because they frequently lead to colonization and to international rivalries, states have, from earliest times, by restrictions on foreigners, by granting monopolies, by subsidies and tariffs, exercised some authority over the movements of international trade. In many cases, however, the international activities of individuals are considered of little international significance, and are not interfered with as long as they keep within the law of the state concerned. Science, art, literature, and other phases of civilization are diffused over the earth, regardless of political boundaries, and international associations of various kinds are formed without interference from the governments of any state.

The greater number of international problems have resulted from direct relations among states, carried on by means of their respective governments. These relations have been either peaceful or hostile. In the first case, they result in diplomacy ; in the second case, in war. The former includes the development of the principles of international law, the formation of consular and diplomatic service, the negotiation of treaties, the holding of international conferences, and the establishment of commissions or courts for the regulation of international interests and the settling of international disputes. The latter includes the long series of armed coflict between states, which have been of great importance in their development and in determining their form and organization. As a result of both warlike and peaceful international relations, various forms of union among states, falling short of the establishment of new states, have been formed. Alliances, leagues, and confederations, more or less permanent and organized, have been created in this process.

Influences on International Relations. The nature of international relations is determined and modified by numerous factors. Some of these are relatively permanent and can be controlled or changed by human effort only in a limited degree. Others may be created or destroyed by deliberate human

action. The relative importance of the various factors varies in different periods of history and in different parts of the earth. Among the most important of these influences are the following :

1. *Geographic factors.* These include especially the natural barriers, caused by mountains, deserts, rivers, and the sea, which divide the earth's surface into natural geographic units and which place obstacles to intercourse among the peoples thus separated. States usually desire the protection of natural frontiers when possible. The international problems of an island state or of a state with well-defined natural frontiers are quite different from those of a state which is easy of access and which is surrounded by strong neighbors. Navigable rivers, such as the Danube, which flow through several states may be a source of conflict and may demand special treaty arrangements or even international control. The development of sea navigation led to long disputes as to jurisdiction over maritime areas ; and the recent progress in aërial navigation raises difficult questions in connection with control over the air spaces above a state. Geographic factors include also the distribution of the natural resources of the earth, particularly of those key commodities which are especially desired or are essential to the economic life of the period. Changes in the relative importance of such commodities may be decisive in the rise and fall of states. The value of coal and iron in the Industrial Revolution of a century ago and the importance of oil in the modern world are examples of the advantages secured by states that possess these valuable materials. Other examples would include the monopoly value of the nitrates of Chile, the cotton of the United States, and the rubber of British and Dutch interests. Competition for the resources of the earth have frequently been among the causes of war.

2. *Population factors.* These include the number of people living in a given area, their relation to the means of subsistence and to the resources available, the rate of growth of population, and the opportunities that exist for making provision for a growing population or for the distribution of the surplus population in other parts of the earth. Questions of colonization and immigration are important in international

relations, and the imperialistic policies of certain states result in part from a growing and vigorous population. Racial differences in the population of the earth also affect international relations, through feelings of racial superiority or racial prejudice.

3. *Psychological factors.* These include certain traits of human nature, such as pride, fear, pugnacity, selfishness, and ambition. These may be stimulated by education and by propaganda. As a result there may be developed strong feelings of patriotic nationalism and ambitious schemes of imperialism. On the other hand, emphasis on the altruistic sentiments and on the unity of mankind and its interests may lead to a cosmopolitan and international point of view. The spirit of nationalism is especially important in present international relations The principle of the self-determination of nations has led to revolts for national independence. Desire for national unification leads to attempts to annex territory occupied by people of similar nationality or to assimilate people of diverse nationality within the state. This latter process sometimes results in the persecution of minority groups and leads to difficulties with the states with which these minority groups are nationally affiliated.

4. *Historical factors.* The relations among states are influenced to a large extent by their past history and by the traditions that are handed down from generation to generation. As a result of past wars, states may view other states as their hereditary enemies long after all causes of controversy have disappeared. As a result of past aid, states may cherish sentiments of friendship for other states, even though their later policies may be decidedly less friendly. The attitude of American public opinion toward England and France for a century following the American Revolution illustrates these facts ; and the unfriendly relations today between France and Germany are intensified by their historical background. Historical attitudes are difficult to change. If memory of the past could be wiped out, the international relations of states, in many cases, would be much improved.

5. *Religious factors.* Differences in religious belief and in religious practices and observances have frequently been

causes of international difficulty. The relation of Catholic to Protestant in the centuries following the Reformation, the relation of Christian to Mohammedan from the time of the Crusades to the present, and the relation of Hindu to Mohammedan in India at present are examples. Likewise, missionary efforts to extend certain religions have had important international consequences, especially in the relation of the more advanced and powerful peoples with those who are backward and weak. The intrusion of missionaries may cause resentment against the foreigner in the countries to which they are sent, as has happened in China. The protection of missionaries and their property has frequently led to the extension of the authority of their home states over the area opened up by their activities, as in the case of large parts of Africa.

6. *Cultural factors*. Differences in the degree of intelligence and of civilization among different peoples of the earth create international complications. Even differences in customs, manners, and ethical standards cause international misunderstandings. Peoples with high standards of living desire protection from the cheap labor of less advanced peoples. Peoples with stable institutions dislike the disorder, violence, and revolution which frequently exist among less developed peoples and which may affect the life or property of their citizens. If the backward peoples possess fertile areas or resources which they do not use or develop, there is a constant temptation for the more advanced peoples to seize their territory, secure control of their resources, or exploit their labor.

7. *Economic factors*. In the modern world, international relations are concerned to a large extent with the promotion of the economic interests of the state or of certain classes within the state. Desire to secure a sufficient food supply, especially on the part of those states whose population is large and growing and whose industrial development has congregated a large part of their population in cities, is a prime factor in international policy. The present situation in England and in Japan illustrates this fact. Industrial states are concerned also with the securing of raw materials and of markets for their finished goods. This concern frequently leads to the

acquisition of colonial dependencies or of spheres of influence in undeveloped regions. For the protection of their home industry and as a phase of their commercial rivalry, states erect tariff barriers against their competitors or exclude competitive products coming from other states. States with surplus capital desire opportunity for profitable investment abroad, especially in the undeveloped parts of the earth. This results in "dollar diplomacy," and frequently leads to intervention or to the extension of political control for the protection of such investments. It also leads to international competition among the wealthy states who are rivals in this process. The problems of international debts and international reparations are further examples of the importance of economic interests in present-day international affairs.

8. *Mechanical factors*. International relations are affected by scientific discoveries and by mechanical inventions. Among the most important of these are improvements in the means of transportation and of communication. The ability of man to overcome natural obstacles by tunnels and bridges, to diminish the importance of distance by rapid and cheap transportation of persons and goods by land, sea, and air and by rapid communication through the postal service, the telegraph, the telephone, and the radio, tends toward international unification. Improvements in communication also increase the opportunity for propaganda and for the influencing of public opinion. Propaganda may be used for national as well as for international purposes. The draining of swamps, the irrigation of deserts, and improvements in agricultural methods and machinery may increase the food supply and relieve the pressure of population upon subsistence, with important results in international relations. The increasing use of labor-saving devices and of machine production causes an enormous dislocation of the laboring population. It may cause wealth and prosperity in some states, unemployment and poverty in others. Such changing conditions are sure to be reflected in the international relations of states. Mechanical inventions and scientific discoveries applied to the art of warfare on land and sea and in the air may revolutionize its methods and may strengthen some states and weaken others. For example, the island position of Great

Britain is less valuable as a defense since the invention of the submarine and the airplane; and the massive fortifications of the European states are little protection against the dropping of bombs or against poison gas from the air.

9. *Military factors.* The influence exerted by states in modern international relations depends to a large extent on their strength, actual or potential, as armed powers. This depends to some extent upon the numbers of their people, but to a much greater extent upon their national wealth, their industrial development and ability to produce or purchase the munitions of war, and the nature of their system of military organization and training. In early times, land power was most important; later, control of the sea was often decisive; at present, control of the air seems essential. Competition in armaments has been an important factor in international relations, has fostered international suspicion and jealousy, and has been a cause of war. Extensive armaments are an economic burden and affect national and international finance. They also influence the military spirit of a people and create a class interested in using the organization created for purposes of war. Those interested in world peace always lay stress on the value of disarmament or of limitation of armaments.

10. *Governmental factors.* Many writers believe that the attitude of a state in international affairs will be influenced by its form of government or by the interests in the state that control the government. It is often argued that despotic states tend to be militaristic and aggressive and that democratic states tend to be peaceful and conciliatory in their international policy. It is true that monarchic states have waged wars for dynastic purposes in which the mass of the people had no interest, that ambitious rulers have desired conquest for their personal aggrandizement, that the ruling class has sometimes favored a foreign war to distract the people at home from attempts at internal reform, and that business interests have drawn their country into war for their financial profit. On the other hand, democratic states are more likely to be influenced by waves of popular emotion and by skillfully conducted propaganda, and may be led into a useless war which the cooler judgment of a small ruling group could avoid. The view that

democracies are inherently peaceful would be more accurate if the people were highly intelligent and were always cognizant of their best interests and of the methods by which public opinion is influenced. The governmental factor in international relations is involved also in the methods by which diplomatic relations among states are carried on and in the attempts to create a machinery of world organization. While the men who operate these systems, and the spirit and motives that direct their action, are more important than the devices used, nevertheless improvements in the form and process of governmental organization may be of great importance.

It will be noticed that the influences that affect international affairs are in many cases closely interrelated. Geographic, population, and economic factors cannot be clearly distinguished. Historical, psychological, and religious factors all rest on man's opinions and beliefs. Mechanical improvements and armaments go hand in hand, since many new inventions are useful for purposes of war. Some of the factors in international relations are especially important in their tendency to divide peoples and to create international rivalries and hostilities. Geographic barriers, the spirit of nationalistic self-interest, racial differences, and economic competition are among those that divide peoples into separate units with interests different from those of other units. The areas of unity created by such factors, however, do not always coincide. Other factors may serve both to divide and to unite peoples, with little reference to political boundaries. Religious differences may divide peoples, but the world-wide extent of some of the great religions creates a spirit of world unity. Economic factors sometimes intensify international rivalry and competition ; at the same time, the tendency to organize commerce and finance on a world-wide scale creates international interests that oppose those of the separate states. Other factors, such as improvements in transportation and communication, the growth of intelligence, and improved methods of international organization, contribute mainly to the formation of an international mind and to the spirit of world unity. The foregoing brief outline of some of the influences that affect international relations shows the complicated nature of

the problem and the need for an intelligent understanding of its basic elements as a background to any successful attempt at improvement.

Conduct of International Relations. The diplomatic relations of states are ordinarily conducted under the authority of a department of the national government known as the foreign office.[1] This department controls the diplomatic service and usually the consular service, though the latter may be shared with the department of commerce or some other department of the central government. The foreign office organizes the administrative divisions and bureaus at the national capital for the conduct of business arising in the course of foreign relations. It recruits, classifies, instructs, and controls the members of the foreign service sent abroad to represent the state, though such officials must be acceptable to the state to which they are sent. The diplomatic service is classified into several ranks, chief of which are those of ambassador (with which are classed the nuncios and legates of the Pope), envoys extraordinary and ministers plenipotentiary, ministers resident, and charge's d'affaires. In addition, there are special diplomatic representatives called attache's, agents, secretaries, counselors, clerks, and the like.

Formerly the rank of diplomatic representatives had an important bearing upon their legal powers and political importance. At present, it is of importance chiefly in matters of ceremony and precedence. States exchange diplomatic representatives of the same rank. The great powers send diplomats of the highest rank to each other, and representatives of lower rank to small nations. The latter, however, frequently exchange diplomats of the highest rank with each other. The present tendency is to avoid discriminations among states as far as possible, even in matters of ceremony. The custom of arranging nations in alphabetical order for purposes of roll call, seating, or signatures is based on the theory of the equality of states. In signing treaties and documents the device of the "alternat" is used. Each power retains the copy on which it appears at the head of the list, the various copies

[1] Usually called the ministry of foreign affairs, or ministry of foreign relations ; in the United States called the Department of State.

being signed by each power once in the first position, once in the second, and so on. When the modern state system arose, the Latin language was used for international purposes. In the seventeenth century, the French language was generally adopted for diplomatic purposes, and it still retains a certain pre-eminence in international affairs. At present, however, the tendency is for nations to use the language with which they are most familiar, and English, Spanish, and German are widely used.

Since diplomatic representatives were at first considered the personal representatives of the sovereign of the state sending them, they were granted certain special privileges and immunities by the state to which they were sent. It was considered improper for any state to force its law upon a foreign state or its agent. While the theory that a diplomat represents the person of the sovereign is no longer held, the desirability of certain immunities for diplomatic agents is generally recognized as necessary to the effective operation of the diplomatic system. These immunities are defined by international law and are incorporated into the national law of each state, with a view to their application in its courts. They include the privilege of personal inviolability and independence of action, and freedom from arrest for civil and criminal acts. The former right of diplomats to extend asylum to fugitives from justice who took refuge in their grounds and buildings has now been generally abolished or curtailed.

The work of a diplomatic representative consists ordinarily in the conduct of negotiations concerning questions at issue between the state that he represents and the state to which he is accredited. Such negotiations may be conducted orally in conversations with the foreign secretary of the state to which he is sent or by the exchange of diplomatic notes in writing. For purposes of permanence and stability, important issues and principles are incorporated into formal written agreements, or treaties. Ordinarily, treaties are negotiated by the regular diplomatic representatives, though special authorization and instructions are usually necessary from their home governments, to which the treaties must be sent for final approval. Treaties of special importance, such as treaties of peace or

general international agreements, are usually negotiated by special commissioners appointed for the purpose. Such representatives are given temporary diplomatic rank.

The process of treaty-making consists of the negotiations, during which the proposals are discussed and a tentative agreement is reached, the drafting of the agreement in a manner satisfactory to all parties concerned, the signing of the document by the accredited agents, and the reference of the treaty to the home government for final approval. This requires ratification by the head of the state, and in many states now includes approval by a representative body. Whether this latter step is necessary depends upon the constitutional law of each state. Representative bodies, such as the United States Senate, are frequently criticized for failure to ratify treaties that are submitted to them. If the executive department, which negotiates the treaty, and the legislative body, to which it is submitted for approval, hold different views on national policy, it is evident that the machanism of governments is defective, since both cannot represent the real wishes of the people. Where the executive and legislative branches are not coördinated and harmonious, it is wise, when possible, for the executive to assure in advance the coöperation of the legislative body, in order to avoid international misunderstandings.

Sometimes international disputes cannot be settled by diplomatic negotiation. Such disputes may be referred to third parties for settlement, by agreement of the parties to the dispute. Sometimes such agreement is furthered by the "good offices" or "mediation", of other states who are interested in the question at issue or in the preservation of peace. Good offices consist in urging the disputing states to renew their discussion and in offering a meeting place or agreeing to act as a go-between in the receiving and transmitting of proposals and counterproposals concerning the question at issue. In mediation the third party goes into the nature of the dispute and attempts to find a solution. This involves more intimate relations, since the third party must enter into the discussions of the disputing states. Obviously the state offering mediation must possess the confidence of both the states involved and must be free from suspicion of self-interest. In the Hague

conventions of 1899 and 1907 the signatory powers agreed to have general recourse to the good offices and mediation of friendly powers in future disputes of serious character. Another method of dealing with disputes as a preliminary to arbitration is the use of commissions of inquiry, for the purpose of getting at the facts and allowing time for passions to cool and for investigation to be made into the merits of the case.

Arbitration is a method of settling international disputes by judges chosen by the parties concerned. It follows judicial methods and aims to settle the dispute in an impartial way by reference to some standard based on the rules of international law, or on principles of philosophic justice, or on a compromise if both parties have just claims. Sometimes the arbitration results from a special agreement, on the part of the states concerned, to submit a particular dispute to this method of settlement. Sometimes states agree by treaty in advance to submit to arbitration disputes that may arise in the future. States usually refuse to submit to arbitration questions of vital interest or those that affect their national honor or national independence. The growth of international arbitration and the recognized value of this method of legal settlement of international disputes led the Hague Conferences of 1899 and 1907 to provide a broad and stable international basis for this procedure. The result was the creation of the Hague Court, a permanent panel of arbiters who are available for those states who agree to utilize this system. Until 1920, the Hague Court constituted the highest development of international arbitration. The creation of the Permanent Court of International Justice[1] at the end of the First World War marked a further step in the process of judicial settlement.

A method of conducting international relations that is rapidly growing in favor and in usefulness is that of international conferences. These are composed of representatives of a number of states who meet to settle international differences by discussion and mutual agreement. International conferences were first held for the purpose of terminating war ; at present they are frequently held in time of peace for the purpose

[1] See below, Chap. XXV, pp. 480-483.

of discussing questions ranging over the whole field of international relations, especially political subjects, legal problems, and questions of economics and finance. For final decision of any question, the rule of unanimous consent prevails, and decisions reached on this basis are frequently incorporated into treaties which are binding on the states that accept them. By this process many rules of international law have been created in recent years. The value of such conferences in influencing international public opinion is especially important.

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CHAPTER XXIV

INTERNATIONAL LAW

OUTLINE

Nature of International Law
Evolution of International Law
Legal Nature of International Law
Sources of International Law
1. Custom
2. Reason
3. Consent
States in International Law
1. Equality of states
2. Sovereignty of states
Content of International Law
1. Subjects of international law
2. Objects of international law
3. Intercourse of states
4. Settlement of international disputes
5. Law of war
6. Law of neutrality

Nature of International Law. International law may be defined as the body of principles and rules generally recognized as binding by the community of states in their relations with one another.[1] It defines the rights of states and the means of procedure by which those rights may be protected and violations of them redressed. Like other forms of law, international law is based upon the recognition of the necessity for rules to govern human contacts and relationships. The desirability of peaceful adjustment of conflicting claims and the consciousness of common interests create a sense of unity and common purpose upon which all legal institutions ultimately rest. The existence of international law implies that

[1] J. B. Moore, "Law and Organization," in *American Political Science Review*, February, 1915.

states recognize their membership in a family of nations and their obligation to observe certain rules of conduct conducive to order and peace.

In addition to the rules of international law which define the rights and obligations of states in their relations to one another, there are also certain rules of courtesy which are generally observed by governments on grounds of mutual convenience and good will. Such, for example, are the extradition of criminals in the absence of definite agreement, the observance of certain diplomatic forms and ceremonies, and the faith and credit given in each state to the public acts, records, and judicial proceedings in other states. These observances in international ralations are similar to the conventions of social intercourse among individuals, and to them the name of "international comity" is given. A special branch of international law has been developed as a result of the rules made by administrative commissions created by international agreement for the regulation of certain common material and intellectual interests. These include such matters as international communication by means of postal correspondence, cables, and telegraph, international transportation, copyright, sanitation and the like. To these regulations the name of "international administrative law" is given.

For the purpose of deciding between two conflicting systems of law in cases affecting private rights, a body of rules known as "international private law" or "conflict of laws" has been developed. These rules are invoked when a suit is brought before the courts of a state by an individual on the basis of rights acquired under the law of another state. They involve such matters as the validity of foreign marriages, wills, and contracts, questions of nationality and residence, and the limits of national jurisdiction. It should be noted that the rules of international private law deal with individuals, not with states ; that they affect private, not public rights ; and that they are applied by national, not international, courts. They are, therefore, not a part of international law proper. Each state is free to apply such rules as it sees fit, but by general international practice a considerable body of uniform principles and procedure has been established.

A further distinction should be made between the rules of international law and the principles upon which individual nations act in furthering their own interests in foreign relations. To these latter principles the name of "foreign policy" is applied. The foreign policy of a nation is the particular attitude adopted by that nation or the special aims held in view by it in its diplomacy. To a considerable degree it is concerned with aspects of international relations that lie outside the scope of international law, in which states are free to pursue their interests according to their own conceptions of national needs. To some extent, however, it is also concerned with the proper protection of national interests under international law. While the aims of national diplomacy should keep within the rules of international morality and correspond to the principles of international law, they have often been somewhat unscrupulously pursued, since they are based on considerations of national interest and expediency.

International law and international morality, while closely connected, are not identical. While international law is a less perfectly developed system of securing justice than the legal systems which control the actions of individuals in civilized states, nevertheless many of its principles are based on ethical standards and conform to ideals of justice and equity. Many improvements in international law have been made by applying to relations among states the same moral principles that are applied to individual relations, and the sanction of international law depends to a large degree on an international public opinion which judges the morality of national acts and policies. At the same time, international law fails to condemn certain practices and principles, especially in connection with war and conquest, which are at variance with ideals of humanity and justice, and it includes many rules which have their origin in convenience and interest rather than in morality. International law, even more than the law within states, tends to lag behind the general standards of ethics.[1]

Evolution of International Law. Man is not only a fighting animal, carrying on a desperate struggle with his environment and with his fellows, but also a social and political being who

[1] B. Bosanquet, *Social and International Ideals*, Chap. XIII.

realizes the necessity and value of organization and coöperation. Recognition of common interests among groups early led to the growth of customs and the formation of rules to guide their action not only in peaceful intercourse but even in war. While international law, as a system of established rules observed by a community of sovereign political units, did not exist before the rise of modern national states at the close of the Middle Ages, yet certain rules and customs, usually with a religious sanction, were observed in the intercourse of early peoples. A crude form of diplomacy and international law was recognized in ancient China.[1] Treaties of alliance, cemented by marriages and providing for mutual exchange and humane treatment of political refugees and immigrants, were negotiated by the Egyptians with their neighbors earlier than 1200 B.C.[2] In India the Code of Manu, compiled about 500 B.C., placed certain restrictions on the usual barbarous methods of waging warfare, and the Brahmans formulated rules of diplomacy by which a ruler might increase his power.[3] The Persians recognized the value of arbitration as a means of preventing war. The Hebraic code placed restrictions on warfare,[4] and the Hebrew prophets put forward the ideal of world peace.[5]

Conditions in the Hellenic world, with its numerous independent city states, were more favorable to the growth of interpolitical relations, although love of city autonomy was stronger than national feeling among the Greeks, and no definite concept of international law was developed. The Greek cities were, however, bound together by ties of race, language, religion, common customs and interests; and their organized relations included religious leagues, confederacies, attempts to maintain the balance of power, and acknowledgment of the headship of a single city. While the Greeks adopted the doctrine, common to all early peoples, that they owed no obligations to foreigners, the various Greek cities were united by bonds that did not exist between them and other peoples.

[1] Martin, *The Lore of Cathay*, Chaps. XXII-XXIII.
[2] Breasted, *Ancient Records of Egypt*, Vol. III, sects. 370-391.
[3] S. V. Viswanatha, *International Law in Ancient India*.
[4] Deuteronomy xx, 10-20.
[5] Isaiah xi, 4.

Within the Greek world crude forms of international comity could develop. Certain customs, such as the inviolability of heralds, the right of asylum, and the sacred obligation of peace during the national religious festivals, were recognized. Agreements to submit disputes to arbitration were included in treaties, and arrangements were made for the settlement of commercial differences. In the third century B.C., when Rhodes became the chief commercial state of the Ægean, a maritime code arose, which was generally observed in the Hellenic world. From this Rhodian sea law many of the commercial regulations of the Roman Empire were derived, and its influence affected the maritime codes of the Middle Ages when commerce was revived. The Greeks even recognized a vague "law of all mankind," which included at least protection to envoys, sanctity of treaties which were made under oath, and certain obligations of alliance and hospitality.

The diplomatic relations of Rome began with her membership in the Latin League, a group of cities of which she finally became the head. Later, the unification of Italy was accomplished by statecraft as well as by force, the Roman policy, divide and conquer, isolating the various peoples and uniting them in alliances of dependence with Rome. After the wars with Carthage, Rome embarked on her career of world conquest and created the Empire, making international relations impossible in a world under one sovereignty. Rome, therefore, contributed to international law chiefly in extending her own law to wider spheres and in breaking down the ancient idea that no obligations bound the relations of different peoples. By reducing all states to a common subjection, Rome paved the way for later legal relations among states. The idea that the world was a unit, dominated by a common superior, survived throughout the Middle Ages and was typified in the theory of the Holy Roman Empire and of the Papacy.

In several ways, Roman ideas and institutions contributed to the later rise of international law. The Stoic philosophy, widely accepted in Rome, was based on the idea that there existed a law of nature, consisting of fundamental principles of justice and reason. These rules were universal, binding on all peoples.

This concept of natural law, identified later with divine law, was useful in serving as the basis and justification for a body of law superior to that of any state and common to all states. The *jus fetiale* of Rome consisted of a set of rules, ceremonial and formal in character, that determined the actions of a special body of priests known as the College of Fetiales. Their principal functions were to give advice on questions concerning war and peace, to act as heralds and ambassadors, to receive and entertain envoys from foreign states, and to give effect to formal declarations of war sanctioned by the Roman assemblies. Their powers were merged later in the general authority of the Emperor, but they contributed certain ideas to the development of international law and practice. The *jus gentium* of Rome consisted of the body of usages and principles common to all peoples among whom the Roman magistrates administered justice. It originated in the jurisdiction of Roman officials over foreigners and in the adjustment of the relations of Romans and foreigners. In order to give aliens protection for person and property, rules of law common to Rome and to her subject peoples were applied. By the later Roman jurists the principles of this law found existing among all nations were practically identified with the law of nature. In addition to the civil law of Rome and to the canon law of the church, the *jus gentium* influenced the legal conceptions of the medieval period and helped to subordinate the barbaric violence of the Teutons to the reign of peace and order, first within the state, later among states. Besides, the *jus gentium* was erroneously considered by many of the early modern interpreters of Roman law to have been a system of rules intended for the adjustment of international relations, and some of its principles were appropriated by the founders of international law and were applied in international practice.

After the fall of the Roman Empire, the theory of a common superior over states still survived. The spell of world-wide dominion and the tradition of the benefits of the Roman peace remained after the barbarian invasions, and men believed that the Empire was to be eternal as well as universal. For a time, after Rome ceased to be the actual seat of government, the world was ruled, in name at least, from Constantinople ; the

coronation of Charlemagne in 800 shifted imperial power to the new line of Frankish sovereigns ; later, the Papacy, which had been the chief agent in creating the new Holy Roman Empire, became its rival for temporal power and for a time exercised authority over Christendom. In actual fact, the medieval period was an age of organized anarchy, of regulated violence ; and, in spite of legal forms and customary law, interfeudal relations were of the loosest kind. The church finally awoke to its humanitarian and international mission and tried to establish peace by means of the Truce of God and the Peace of God. Similar efforts to suppress private warfare were made by the kings of the rising national states, but the rule of brute force was not seriously checked until the beginning of the modern period.

During the Middle Ages there was but little consciousness of a direct legal relation among sovereign princes outside of the graded obligations of the feudal system. Separate principalities existed, but the sense of unity was so deep that the idea of distinct and reciprocal relations among them was lacking. The bond of relationship was felt not so much among the principalities themselves as with the higher authority to which they all were subjected. Disputes not settled by warfare were sometimes submitted to the arbitration of the Pope. Kings, bishops, eminent jurists, and even cities were sometimes chosen as arbiters during the Middle Ages ; but the practice did not materially mitigate warfare, and few general principles for the guidance of intercommunity relations were developed. For a time, indeed, there was even a tendency toward the view that states, in their mutual dealings, need recognize no law but the right of the strongest or most cunning. Machiavelli, in *The Prince* (1513), set forth the doctrine that in matters of state ordinary rules of morality did not apply. Fortunately, other tendencies, in a different direction, were preparing the way for a more rational and humane conception of interstate relations.

Throughout Christendom there were common religious beliefs, common customs, and a language common to the educated classes. The ideal of world unity was fostered by

the tradition of the Roman Empire and by the cosmopolitanism of the Christian church. The revived study of Roman law in the twelfth century furnished a foundation for the growth of royal power and for an enlightened system of international jurisprudence. Churchmen, interested in the canon law, discussed certain international questions, especially those relating to war, from the point of view of general morality and Christian traditions The Crusades aroused a sense of common interests and a consciousness of the unity of Christendom. The ideals of chivalry emphasized honor and equitable dealing and tended somewhat to humanize warfare. Especially important was the revival of commerce which, centering in the Italian cities, was greatly stimulated by the Crusades. In spite ef feudal disorder, piracy, and heavy port exactions, trade was gradually extended to northern Europe by overland routes and by the sea ; and leagues of cities, foremost among which was the Hanseatic League, were formed for its protection and extension. Later, the opening of new routes to the Orient and the discovery of America transferred the center of commercial activity to the Atlantic and extended the range of external relations.

As the result of international dealings caused by commerce, codes of maritime law were formed. Chief among these was the *Consolato del Mare*, a collection of principles that regulated the trade of the Mediterranean. Some of its rules concerning the rights of belligerents and neutrals on the sea in time of war survive to the present day. Similar maritime codes were prepared by the nations of western Europe and by the Baltic nations. Closely connected with the growth of commerce and of maritime law was the establishment of consuls. As early as the eleventh and twelfth centuries, consular officials, chosen by the seamen or merchants of the Italian cities, settled disputes affecting their countrymen in foreign lands, and assisted by advice and information the merchants of their home states. Consuls were at first sent only to the Eastern countries, but during the thirteenth and fourteenth centuries the institution spread to the West. The right of choosing consuls, at first in the hands of mercantile associations. soon

passed to the government of the state to which the merchant belonged.

Of great importance in the development of international law was the influence of feudalism in associating political rights with the possession of land, thus leading to the idea of territorial sovereignty. The kings, standing at the apex of the feudal hierarchy, from being lords of their peoples became lords of their peoples' lands. During the medieval period, direct royal authority was limited by the actual strength of the feudal nobility and by the belief in a common European superior, either Emperor or Pope. But as feudalism fell into decay and the powers of Emperor and Pope diminished, the kings, supported by monarchial doctrines made familiar in the revived study of Roman law, finally stood forth as absolute sovereigns over the territory of separate and independent national states. The long contest between Papacy and Empire, the controversies between the Pope and the rising national monarchs, the Great Schism, and finally the Protestant Reformation destroyed the sense of unity and divided Christendom into hostile camps. Since the bond of common religious faith was broken, the fact that a group of states in the modern sense had come into existence could not long escape observation. Few rules existed, however, to determine the proper relations among these growing and rival political units ; and the kings of the period, flushed with a sense of unlimited power, were guided by self-interests alone in matters of state policy. In the early modern period, unscrupulous bad faith characterized statecraft, and wars were barbarously cruel and destructive

These conditions prepared the way for thinkers who asserted, in the latter part of the sixteenth century, that there were ethical rules or natural laws applicable to the intercourse of states, even though no earthly authority had power to enforce obedience. Victoria, a Dominican monk and professor at Salamanca, conceived the idea of a community of interdependent nations based on sociability and natural reason. Ayala, a Spanish military judge, attacked the doctrine of unregulated war and argued for a natural law of nations established by common consent. Gentili, an Italian who taught at Oxford, maintained that there was a law of war based on

reason and consent. He separated international law from theology and ethics and made it a branch of jurisprudence. Suarez, a Spanish Jesuit, frankly recognized the separation of states, but insisted on the moral unity of mankind. He argued therefore that there must be a community of states and a law, furnished by reason and general custom, to regulate their dealings. Over against the theory of the sovereignty of the state, standing for the new national monarchies in Europe, and against Machiavelli's doctrine that the state was a self-sufficing and non moral entity, was set the theory of a law of nature, binding upon all states and denying their irresponsibility and independence in international dealings.

The growth of these political principles and the actual conditions in international relations made possible the work of Grotius,[1] usually considered the founder of the science of international law. Grotius started with the universally accepted ideas of natural law, based upon reason and the innate sociability of man, and claimed its sanction for the law of nations. He also borrowed many principles from the Roman *jus gentium*, a body of positive rules sanctioned by general agreement, and thus laid the basis for the modern theory, which arose after the doctrine of natural law was abandoned, that international law derives its sanction from the common consent of nations. While Grotius borrowed largely from his predecessors, to whom he gave scant recognition, and while many of the principles and usages laid down by him became obsolete, nevertheless the fundamental conceptions underlying his system—the legal equality and the territorial sovereignty of states—still form the basic principles of international jurisprudence. Several reasons for the enormous influence exerted by the work of Grotius may be mentioned. In addition to his attractive style and the marvelous erudition he displayed in gathering instances from all history and piling precedent upon precedent, was the fact that he based his system upon doctrines accepted by the leading thinkers of his period. The law of nature, territorial sovereignty, and the principles of Roman law were approved ingredients for his constructive system. The ideas of world

[1] *De Jure Belli ac Pacis* (1625).

church, world empire, and feudal independence that he attacked were already discredited. Finally, the evils arising from the absence of morality in interstate dealings and from the constant and barbarous wars led men to realize the need of a system under which principles of honor and justice might be applied to the relations among states.

Accordingly, in the Treaty of Westphalia (1648), which brought the terrible Thirty Years' War to an end, many of the principles of Grotius were applied. This treaty recognized a society of states and accepted the doctrine that each territorially sovereign state is independent and is entitled to legal rights which all other states are bound to respect. The successors of Grotius developed these principles, some depending mainly on the idea of a law of nature to support international law, others emphasizing the importance of treaties, customary practices, and general consent. Various attempts were made to codify, in part, the accepted principles of international law. Further impetus to the regulation of interstate relations was given by the establishment of a permanent diplomatic service. Permanent resident embassies were unknown in earlier times. Special envoys were sent when messages were to be delivered or negotiations carried on. The exchange of diplomatic agents was compelled to win its way against a mass of suspicion, caused largely by the unscrupulous nature of early diplomacy. Not until the sixteenth and seventeenth centuries did the nations of western Europe accept in good faith the idea of permanent ambassadors from other countries residing in their territory. International arbitration, which almost disappeared during the seventeenth and eighteenth centuries, has been revived and has been frequently used during the past century. International conferences, dealing with questions of all sorts, are becoming increasingly frequent, often resulting in general international law. Especially important is the recent growth of international organization, of permanent administrative, judicial, and to some extent even legislative bodies, to deal with certain questions of international interests. The rules of international law are always in danger of being ignored when a great war involves a life-or-death struggle among the world powers ; and the

theory of the legal equality and independence of states is violated in practice by the predominant influence exerted in European affairs by the concert of great powers, in America by the United States under the principles of the Monroe Doctrine, and by Russia in the satellite states on her western border. The First and Second World Wars were followed by great enthusiasm for international organization, but hatreds engendered by war and national ambitions made international agreements difficult.

Legal Nature of International Law. For many years a controversy has been carried on over the question of whether international law is in reality law, a branch of jurisprudence proper, or whether it is merely a body of rules of international morality, without legal force. The analytic school of jurists, founded by Bentham and Austin, views law as a definite command, created by a sovereign political authority and enforced by sanctions and penalties. In their view, law proper, or "positive law", is limited to commands issued by political superiors to political inferiors; it must have a definite origin and a definite obligation. Accordingly, they deny that international law is true law, arguing that it is not the definite command of a sovereign political superior, with power to enforce its authority, that there is no legal duty of obedience on the part of those to whom it applies, and that there are no courts with power to enforce it or impose penalties for disobedience. They hold that international law lacks definiteness, since there is not universal agreement concerning its principles, and that each state is ultimately the judge in its own case, since international law recognizes force, in the form of war, as the ultimate and legal means of final settlement. Because of these differences between international law and the law imposed by states upon their own citizens, the Austinian jurists, emphasizing the sovereignty and independence of states, relegate international law to the domain of international ethics,—as differing in importance but not in nature from other principles sanctioned by public opinion but not by law.

In opposition to this view, the historical school of jurists, founded by Savigny and Maine, argues that law is not always a definite command, but that it often consists of customs and

usages which were never formulated by a political sovereign. They hold that the true test of law is its general recognition and observance and that a moral sanction is sufficient, the threat of physical force being unnecessary. From this point of view, the important element of law is the existence of a body of rules which have been put into legal form and which are generally supported by public opinion and observed by those whose conduct they are intended to guide. Judged by this test, the rules of international law may properly be considered as law.

This controversy turns, obviously, upon the definition of law. The analytical jurists restrict law to rules that are enacted, interpreted, and enforced by a political sovereign; the historical jurists include as law rules that are embodied in custom, interpreted by the parties to the case, and enforced by public opinion or by appeal to arms. The latter group feels that if the legal nature of international law be denied, the respect in which its rules are held would be diminished, and states would be encouraged to ignore their international obligations. It should be noted, however, that the principles of international law which are most definite and most faithfully observed deal mainly with international interests of obvious convenience or of relative unimportance. Many important questions of vital interests in the national policy of states lie outside the existing rules of international law and result in frequent international difficulties. This is particularly the case in the field of international economic relations, where rival states compete for raw materials, foreign trade, and concessions in undeveloped countries by methods as lawless as was industrial competition within the state in the period of *laissez faire*. The forces of national expansion, generally known as "imperialism," are controlled by few recognized rules of international law. As long as states refuse to place under international control questions which affect their national honor and their vital national interests, and insist upon their sovereign right to interpret international law as they see fit or to refuse to be bound by obligations to which they have not given their consent, the conflict between state sovereignty and international law results in a weak and limited body of international rules.

The defects of international law are those of any system of law in the early stage of its development. These include the uncertainty of its rules, the narrow limits of the questions it covers, the slowness of its development, and the frequency of its violation. Unlike the older system of law within the state, which has built up a definite machinery for its creation and enforcement, international law has thus far created only a limited and imperfect set of institutions for its creation, interpretation, and enforcement. Progress is being made, however, in the direction of definite international legal organization. To a certain extent the rules of international law have been definitely formulated by great international conferences and have been administered and interpreted by judicial tribunals, such as courts of arbitration and the Permanent Court of International Justice. In some cases, even a definite sanction has been applied, in the form of economic pressure or armed intervention. Furthermore, the accepted rules of international law, if they do not conflict with national legislation, are recognized as a part of the law of the land and are indorsed by the highest national courts, at least in England and the United States.[1] Questions of international law are always treated as legal questions by those who conduct international business ; and in the courts before which they are brought, legal forms and methods are used in diplomatic controversies and in arbitral proceedings, and authorities and precedents are quoted as in courts of law.

If the legalistic theory be adopted that laws are always commands given and enforced by a definite political sovereign, then international law is not properly *law*, since that would imply world unity and world sovereignty. The term "international law" thereby involves a contradiction. If it is international, it is not law, since there is no single sovereign to make or enforce it ; if it is law, it is not international, but the law of a world state. International law is not concerned with the relations of political superiors to political inferiors ;

[1] See opinions of Chief Justice Alverstone in *West Rand Central Gold Mining Co.* v. *The King* (1905), 2 K. B., 391, and of Justice Gray in *Paquete Habana* v. *U. S.* (1899), 175 U. S., 700.

it is not the expression of a supreme will, but the result of the interplay of a number of legally independent powers

On the other hand, international law is considerably more than a collection of moral rules. It has its source in political authority, and it regulates the actions of political bodies. Its ultimate basis is the same consent and force upon which all political sovereignty rests. Its principles have been elaborated by legal reasoning, and its procedure follows legal methods. Necessity and utility underlie its creation and its observance. While it is still an undeveloped and imperfect system of law in an imperfectly organized political world, its rules at least lie on the frontier of law and constitute a system of jurisprudence rather than a code of morals. If the definition of law be somewhat widened to include a body of rules for human conduct within a community which by common consent of this community shall be enforced by external power and not by the internal conscience, then the rules of international law are properly law.

Sources of International Law. In the modern development of international law there have been two main theories as to its nature and the basis of its obligation. One theory, representing the old natural-law tradition, holds that the principles of international law can be rationally deduced from the essential nature of states. States are viewed as legal persons, possessing certain fundamental natural rights, usually stated as the rights to independence, equality, self-preservation, respect, and intercourse. From the nature of the state and its rights there naturally result certain legal principles which are binding upon states. The other theory looks to the practice of states, rather than to philosophical principles, and argues that international law consists only of those rules to which states have given their actual or tacit consent, and that their binding force is the consent of states to be bound. This doctrine emphasizes the sovereignty of the state and the fact that a self-imposed limitation is not a legal limitation. Both theories are based on certain assumptions concerning the nature of the state : the first assumes that certain rights are inherent in statehood ; the second, that states cannot be bound except by their own consent. Both theories contain

certain elements of truth, and by combining them we discover the sources of international law. These are (1) custom, (2) reason, and (3) definite consent.

1. *Custom*. The chief source of international law is the body of customs which have gradually developed and which express the implied consent of the states that observe them. Certain usages and practices, set by particular states, have been accepted and imitated by other states until they have grown into a fairly definite body of rules which are recognized as obligatory and as having legal standing. This body of international law resembles the English common law, deriving its authority from generally accepted principles and testing new cases by applying the precedents of the past. Many principles of conduct in the relations among states have been based on analogies with the principles regulating the conduct of individuals, and can trace their origin to a remote antiquity.

2. *Reason*. Customary law, however, is always somewhat uncertain, and may lead to disagreement concerning its content. Besides, it grows too slowly to keep pace with rapidly changing conditions or to fill the gaps that are disclosed as conceptions of international justice become increasingly clear. It is never sufficiently definite or detailed to provide for every situation that calls for legal decision. Accordingly, those who administer it must at times resort to what was formerly called natural law, that is, to principles of equality discovered by reason. This does not mean the reasons of single or private individuals, but a judicial reason, recognized by lawyers as valid. By considering precedents, finding analogies, and expanding principles already accepted, those who administer international law establish new rules. This source of international law is accepted as valid, and is constantly resorted to in the practice of states, both in the decisions of international tribunals and in the legal arguments conducted by foreign offices in their diplomatic correspondence.

3. *Consent*. Finally, a considerable body of international law is formulated by express consent among states in the form of treaties. Not all treaties create international law. The ordinary treaty by which two states enter into engagements for some special object creates no obligations on other states

and can seldom be used safely as evidence to establish general rules of law. The treaties which may be viewed as sources of international law are those so-called "lawmaking" treaties which are entered into by a large number of states for the purpose either of declaring what the law is on some particular question or of creating a new general principle for future conduct. Of this nature are the numerous conventions which have been adopted by international conferences during the past half-century. The increasing scope and content of this conventional law of nations is making it of relatively more importance than the older customary law. Great international conferences perform in an imperfect way the function performed by the legislature in a state, lacking the principle of majority rule and the machinery for enforcement. They do, however, strengthen the idea of a rule of law among states, and to some extent have created rudimentary systems of international government and administration.

Various attempts have been made to reduce the rules of international law to systematic codes. Some of these attempts have been directed to arranging and classifying the rules actually in force among states ; others have included, in addition to a compilation of existing rules, suggested modifications considered desirable to bring existing rules in closer touch with new needs and standards ; others have been addressed to complete reconstruction of the existing system on the basis of ideal principles. Some of these codes have been prepared by private persons or associations or by single governments ; others have been formulated by representatives of a number of states and officially ratified by their governments. Under the auspices of the League of Nations efforts were made to continue this process.

Sometimes confused with the *sources* of international law are what may be called the *evidences* of international law, that is, the documentary material which bears witness to existing customs and principles. Arranged somewhat in the order of their importance, this material includes the following :

1. Great international treaties that create new principles or codify existing practice.

2. Agreements of international conferences whose work has not been officially ratified.

3. Treaties between two or more states that declare existing law or stipulate new principles.

4. Decisions of international judicial tribunals, such as courts of arbitration, commissions of inquiry, the Hague Court of Arbitration, and the Permanent Court of International Justice. To some extent the decisions of prize courts and of other national judicial bodies deal with questions of international law.

5. Laws, ordinances, proclamations, decrees, and instructions issued by states to their diplomatic or consular representatives and to their military and naval commanders.

6. Opinions of statesmen as expressed in state papers, diplomatic correspondence, and legal opinions.

7. Writings of eminent jurists and authorities on international law, and the proceedings of learned societies or institutes.

States in International Law. In contrast to the natural persons who are subject to the law of the state, the subjects of international law are corporate bodies known as states. For purposes of international law a state may be defined as a permanently organized political society, occupying a definite territory and possessing within that territory a freedom from control by any other state which enables it to act as an independent political agent in relation to other states. For purposes of international relations, the actions of public officials designated by the state to represent it are viewed as the acts of the state, for which the state is held responsible.

1. *Equality of states.* The theory of the equality of states has frequently been urged by writers on international law. This doctrine was brought in by the believers in natural law, who argued that as all men were equal in the state of nature, so states, still existing in a state of nature, are equal. Aside from the fallacy in the major premise and in the analogy, this theory is contradicted by obvious facts. States are unequal by almost any test—size, population, wealth, strength, and degree of civilization being among the most obvious. While differences among states in area and population do not

create serious international difficulties, difference in degree of political development and of civilization are more troublesome. As a consequence the community of nations is composed of states that enjory full membership and those that enjoy partial membership, under a degree of wardship. Even among those that enjoy full membership there are some states that are subject to restrictions which limit their full rights. States are equal not in the rights that they possess but in the sense that the rights of each state, whatever they may be, are entitled to the same legal protection as the rights of other states. Small and weak states naturally favor the theory of the equality of states, and sometimes put forward unreasonable claims that hamper the development of international law and institutions. This is particularly the case when the theory is used to justify the demand that each state be entitled to an equal voice in the decision of international questions or in the control of international organization.

2. *Sovereignty of states*. The chief difficulty in international law arises from the theory that states are sovereign in their external relations. The theory of sovereignty, which arose at the beginning of the modern period, was applied originally to the internal aspect of the state, for the purpose of emphasizing the unity of the state, supremacy of its law over all persons and associations within it, and the distinction between rulers and ruled. It was especially applicable to the monarchic states of that period and was valuable in the legalistic sense in pointing out that there could be no legal superior to the supreme law-making power within the state. With the advent of democratic constitutional government, in which the authority of the state is widely distributed and in which the holders of power are legally limited and legally responsible, the theory of sovereignty, even in its internal aspects lost much of its value and has been seriously attacked by many modern writers. The extension of the idea of sovereignty to the personified state in its external relations with other states added further confusion. The idea of sovereignty was extended to imply independence of external control as well as supremacy within the state. First it was used to oppose the claim of one state to be overlord of another ; finally it was expanded to suggest the complete free-

dom of the state in its relation to the community of nations as a whole. To speak of the state as sovereign, in the sense of superior, in its relations to other states is meaningless, since there could be only one such sovereign in the family of nations. To speak of the state as sovereign, in the sense that it is not controlled by law, would make international law impossible and would ignore the fact of the actual interdependence of states in the modern world and the varying degrees of dependence of different states.

The concept of sovereignty, in so far as it is applicable to modern states. should be limited to the internal relations of the state to its subjects. In external relations, the term "independence," rather than "sovereignty," seems preferable. And the degree of independence is not the same for all states. A state which controls its international relations without dictation or control from other states is fully independent. A state which is recognized as a member of the family of nations and as a party to international law, but which controls its international relations only in part, such as a protected state or a neutralized state, is a dpendent state. But all states, independent and dependent alike, are interdependent. They exist, not in a political vacuum, but in continuous political relations with one another, and expediency and necessity bring all of them under the obligations of international law. The traditional theory of sovereignty implies the right of each state to act as it chooses, without any restriction ; the facts of international life show numerous restrictions upon state conduct in matters concerning which general rules are recognized and the right of arbitrary action has been renounced. Any state which falls back upon its "Sovereignty" to repudiate its international obligations becomes an international law.

Content of International Law. Writers on international law are not entirely in agreement as to its proper content or as to the logical method of its classification and arrangement. The following outline, however, suggests the most important questions with which it is concerned.

1. *Subjects of international law.* Under this head fall the determination of the membership in the international community, whether complete or partial, and the methods by which

such membership is acquired or lost. It includes also the nature of the rights which these members possess under international law, and of the duties and obligations which it imposes upon them.

2. *Objects of international law.* This division is concerned mainly with the territory of the state, the method by which territory may be acquired or lost, and the nature of the state's jurisdiction over its territory. It includes the distribution of the land, water, and air of the globe among the various states, and the degree to which these areas come under national or international control. It is also concerned with individual persons, in so far as they are affected by international law, which deals with questions of citizenship, immigration, extradition of criminals, and the like.

3. *Intercourse of states.* This includes the rights and duties of diplomatic agents and consuls, the organization and procedure of international conferences, and the nature and methods of treaty agreements.

4. *Settlement of International disputes.* Under this head fall the various methods by which international differences may be settled in peaceful ways or by forcible methods that fall short of war.

5. *Law of war.* This includes the nature of war as recognized by international law, its legal effects upon the normal relations of the belligerents, the methods of waging it on land, on sea, and in the air which are regarded as legal under international rules, and the methods of bringing it to an end.

6. *Law of neutrality.* This law is concerned with the respective rights and duties of belligerent and neutral states in time of war. It aims to protect the citizens and property of neutral states from unnecessary interference on the part of belligerent states, and to prevent neutral states or their citizens from giving unfair aid to any belligerent.

The classification above does not entirely cover the field of international law, and its subdivisions to some extent overlap; nevertheless it suggests in outline from the general nature of the questions with which international law, at the present stage of its development, is concerned.

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CHAPTER XXV

ASSOCIATIONS OF STATES

OUTLINE

Nature of International Associations
1. Unequal and equal
2. Unorganized and organized

Unorganized Unions
1. Alliance
2. Neutralized state
3. Protected state

Personal and Real Unions
1. Personal union
2. Real union

International Administrative Unions
Confederations
The League of Nations
The Permanent Court of International Justice

Nature of International Associations. When two or more states have interests in common, they may join in some form of international association for the purpose of joint regulation of their common interests. If, in forming the union, the states give up their sovereignty and their external independence to such an extent that they cease to be states, the result is not an association of states but a new state. Associations of states consist of members who retain a sufficient degree of independence to continue to be states after the union is formed, and the union itself does not constitute a state. The usual method of forming international associations is by treaty agreement on the part of the states concerned.

1. *Unequal and equal.* Various methods of classifying international associations have been suggested. A distinction may be made between those international associations that are

based on the principle of equality and those that are based on the principle of inequalily. In the former case, the association is voluntary on the part of all its members and is expected to be of advantage to all, and the members have equal voices in determining the policies of the union. In the latter case, the association involves the relation of superior to inferior, the arrangement is to a greater or less extent enforced on the weaker member or members, and the advantages of the union accrue mainly to the superior, which dominates the policy of the union. These two types of association shade off into one another, the degree of equality or inequality on the part of the members showing considerable variation. In the case of associations based on inequality, it is sometimes difficult to determine whether the inferior member retains its statehood or whether it becomes a dependency of the stronger power. If the latter point is reached, the arrangement ceases to be an association of states, the weaker member becoming a part of the state system of the superior.

2. *Unorganized and organized.* A useful distinction may be made between unorganized and organized associations. In the former, no common governmental organization is created for the purposes of the union, such action as is needed being taken by the regular governments of the separate members. The only bond holding an unorganized association together is the treaty agreement entered into by the states that compose it. In an organized association not only are the members bound together in a juridical system by treaty agreements, but they have also established certain common central organs of government, distinct from the governments of the separate members, for the purpose of formulating the will of the union or administering the functions for which the union was created. The governmental organs of the association, however, derive their authority from the separate states composing the union; they do not determine their own competence, nor may they exercise authority not specifically delegated. Sovereignty remains in the members of the association; they may widen or narrow the powers of the governmental bodies set up for the purposes of the union, may destroy them if they see fit, or may withdraw from membership in the association.

Unorganized Unions. Associations of states lacking any common governmental organization take various forms. In the broadest sense, every treaty agreement entered into among states creates an international association. In a narrower sense, the term may be limited to those agreements by which certain more definite and permanent relationships are established between two or more states for the purpose of joint political action, especially in their relation to other states.

1. *Alliance.* The simplest form of unorganized union consists of alliances, or leagues, formed by states for the advancement of certain common political ends, such as defense against attack, guaranty of particular rights, maintenance of neutrality, and the like. Into such alliances the members usually enter on the basis of equality, and mutual advantages are expected to result.

2. *Neutralized state.* Another form of unorganized association results when a small state is neutralized by a group of the great powers This is accomplished by a treaty agreement among the states concerned, by which the independence and territorial integrity of the neutralized state is guaranteed by the great powers. In return, the neutralized state agrees not to wage war except in self-defense, and not to enter into any arrangements which might require its participation in a future war or deprive it of its territory. While the neutralized state derives certain advantages from the arrangement, it also suffers certain restrictions upon its complete freedom of external action. The arrangement is not viewed as one among equals, but is to some extent imposed upon the neutralized state by the great powers for their own purposes. In 1815 the powers which signed the declaration of Vienna recognized the perpetual neutrality of Switzerland and guaranteed to it the inviolability of its territory. The neutralization of Belgium, first effected in 1831, was confirmed by the Treaty of London in 1839, in which the signatory powers agreed that Belgium should form an independent and perpetually neutral state and that it should be bound to observe neutrality toward all other states. At the close of the First World War the King of Belgium declared that Belgium was freed from the obligation of neutrality that had been imposed upon her by the powers,

and this demand was recognized in the Treaty of Versailles, which stated that the former arrangement no longer conformed to the requirements of the situation.

3. *Protected state.* Various forms of unorganized association between strong and weak states resulted from an arrangement by which the weaker member usually possessed autonomy in the management of its internal affairs, but was to some degree dependent upon the stronger member in respect to foreign relations. In some cases this arrangement resulted from the gradual emancipation of a subject province, which passed through a transitional stage of domestic autonomy, subject to the guardianship of the state to which it formerly belonged, before attaining complete independence. In this case the stronger state was called a suzerain state, and the weaker a vassal state. This arrangement grew out of the feudal system of the Middle Ages, especially in the relation of the smaller German states to the Holy Roman Empire. More recent examples included the relations of certain Balkan states to Turkey during the nineteenth century and of the Transvaal to Great Britain between 1881 and 1899. A protected state differed from a vassal state in that it generally enjoyed a degree of independence prior to the treaty by which it became a protectorate. In theory, therefore, its status represented a voluntary act of subordination to the protecting state, rather than a grant of autonomy made by a suzerain to a vassal. The protected state usually surrendered control over its foreign relations while retaining a large measure of freedom in its internal government. In most cases the protected state was under the guardianship of a single state, as in the relation of Cuba to the United States. Sometimes several of the great powers jointly acted as the protector, as in the case of Morocco between 1906 and 1911.

A unique form of international association exists in the present British Commonwealth of Nations, which includes Great Britain and the self-governing dominions, which are now practically independent states.[1] They are united by bonds of

[1] See R. A. MacKay *Changes in the Legal Structure of the British Commonwealth of Nations*, in *International Conciliation Pamphlets*, No. 272, September, 1931.

common interest and by long history and tradition, rather than by treaty agreements.[1] An imperial conference is the working bond of union

Personal and Real Unions. Personal and real unions have been important forms of international association in the past, but are now of historical interest only, since they appeared among states governed by hereditary rulers, and this form of government is rapidly becoming obsolete.

1. *Personal union.* A personal union exists when two or more monarchies have the same person as their ruler. This relationship is usually accidental, resulting from royal intermarriages through which, by the laws of succession, the same person becomes heir to the crown in more than one country. If the laws of succession are identical, such an arrangement continues indefinitely. If the laws of succession differ, the arrangement comes to an end when, according to the law of one state, a person (for example, a woman) becomes ruler of that state who, according to the laws of the other, may be ineligible to the throne. A personal union may also be established by the election by one state of the ruler of another state to be its ruler also. In such case the union ends with his death unless renewed by the election of his successor. In the case of a personal union, the states composing it remain separate and independent, each having its distinct political organization and legal system. One member might even go to war with the other, or with an outside power, without affecting the other. The only bond of union is the common ruler, who possesses two distinct legal personalities, and who may possess widely different powers in the states composing the union, depending on their respective constitutions and laws. His acts as ruler of one state have no legal effect in the other. Examples of personal unions include that of Spain and the old German Empire under Charles V, of England and Scotland from 1603 to their union in the Kingdom of Great Britain in 1707, and of Great Britain and Hanover from 1714 to the accession of Queen Victoria to the British throne in 1837, the laws of Hanover not permitting a woman to rule in that country.

[1] With the exception of the Irish Free State, which was established by a treaty agreement between Great Britain and the Irish revolutionists.

2. *Real union.* A real union results, not from the accident of inheritance or the temporary union of states under a common ruler, but from a definite and voluntary agreement on the part of two or more states to set up a common monarch and to establish certain governmental arrangements for the regulation of their general interests. It is a special form of confederation, characterized by provisions in the constitutions of the member states that the same person shall act as the representative of the sovereignty of each state, and that this connection shall obtain regardless of who the prescribed qualifications happen to determine that this common ruler shall be. Each state retains its sovereignty and its control over internal affairs, but for external relations the member states act as a single international personality. While a real union may be dissolved by the voluntary action of the states composing it, it possesses greater elements of permanence than a personal union, since it is not affected by the death of the reigning sovereign or the extinction of the reigning dynasty. The most important examples of real union were those of Norway and Sweden, and of Austria and Hungary. By treaty agreement in 1815 Norway recognized the king of Sweden as its sovereign and representative in foreign relations, and a common diplomatic and consular service under the Swedish foreign minister was established. This union came to an end in 1905, when a treaty of permanent separation was drawn up by the two states. The union of Austria and Hungary was created in 1867 by a compact, which was adopted in the form of identical statutes passed by the parliaments of the two states. It provided that the emperor of Austria should also be king of Hungary, and in addition set up a common legislative body for certain limited purposes, common ministries of war, finance, and foreign affairs, and a common army and diplomatic service. In international relations the union acted as a unit, but for most purposes of internal administration each state retained its independence. This union was destroyed by the peace treaties at the close of the First World War. It may be noted that the relation between Great Britain and the self-governing dominions closely approaches the nature of a real union, since common allegiance to the Crown is one of the chief

bonds that hold the British Commonwealth of Nations together.

International Administrative Unions. As a result of the increasing interdependence of the various states in the world, and for the purpose of regulating certain private and business interests that affect a number of countries, there have been formed in recent years what are known as international administrative unions. These are created by treaty agreements among the parties concerned, in some cases including only a few states, in others practically all the civilized nations. Unlike most international associations, they are not intended for purposes of defense or of government, but for the regulation of certain nonpolitical interests and services.

The earliest unions were established for the regulation of international communication, and included commissions to control the navigation of international rivers, such as the Rhine and Danube, and to administer the international postal and telegraph services. Another group is concerned with questions of international health and morals. It includes the International Sanitary Union, the International Office of Public Health, the unions for the regulation of the opium traffic and the liquor traffic in Africa, and for the suppression of the slave trade and of white-slave traffic. A group that is growing rapidly in importance is concernedwithi nternational economic interests. It includes the International Metric Union, the Union for the Publication of Customs Tariffs, the International Labor Office, the International Sugar Union, and unions for the protection of literary, artistic, and industrial property. In recent years bureaus have been created to deal with general scientific matters. Such are the International Geodetic Union, the Committee for the Exploration of the Sea, and the Pan-American Scientific Congress. At present there are more than forty international administrative unions in existence.

In organization and in powers the various unions show little uniformity, since each was created to fill a particular need. Usually a permanent administrative bureau or commission is created, with headquarters in a city in one of the small neutral countries of Europe. This permanent staff of experts administers the affairs of the union, exercising such powers as are

delegated to it in the treaty by which the union was created. From time to time international conferences are held, composed of delegates from the members of the union ; and these bodies determine the policy of the union and supervise the work of the permanent administrative staff. The expenses of the union are usually apportioned among its member states in proportion to their size, population, or wealth ; in some cases the bureaus are supported in part by private funds. In addition to serving as a clearing house for the exchange of opinions on questions of common interest, the administrative staff of the union performs various services. It collects and distributes information, keeps records, makes recommendations for consideration and action by the member states of the union, and in a few cases determines rules which are accepted as binding by the states concerned. International administrative unions represent an interesting experiment in international cooperation, forming a partial organization for the administrative system of a world federation. When the League of Nations was formed, its Covenant[1] provided that, with the consent of the states concerned, the existing bureaus, and similar bureaus established in the future, should be placed under the direction of the League.

Confederations. The most important form of association of states is the confederation, in which a number of states, having interests in common, unite on the basis of equality and set up a central government to which are delegated certain powers. This common government usually consists of a congress of delegates who represent the governments of the states composing the confederation, and these delegates usually vote by states and under instructions from the governments that they represent. In a confederation the member states retain their full sovereignty and legal independence, and no new state is created. There is a central government, but no central sovereignty. The central government is, in effect, a branch of the government of each of the associated states, and its authority is obtained by delegation from these states. The instrument which creates the confederation and defines the powers of the central government is sometimes called a cons-

[1] Article 24.

titution ; but, strictly speaking, it is a compact or treaty among the states, and derives its validity from their consent. Since a confederation is not a sovereign state, any member may withdraw from it. Such withdrawal may be a violation of international good faith, and may furnish grounds for complaint on the part of the remaining states, but it is not an illegal or unconstitutional act.

Confederations have been numerous in the historical development of states. The ancient Greek cities formed numerous confederations, one of which, the Achæan League, closely approached a real federation. The Hanseatic League and the Holy Roman Empire were important confederations in early modern times. More recent examples were the old German Confederation from 1815 to 1866, the Swiss Confederacy from 1815 to 1840, and the union of the American states under the Articles of Confederation from 1781 to 1789. Experience has shown that the confederation is a weak form of organization, representing a transitional stage of political development, and showing a tendency either toward disintegration or toward the consolidation of its members into a single state.

A confederation resembles an alliance in that it is composed of a number of states united by treaty agreement on the basis of equality and for mutual benefit. It differs from an alliance in possessing common organs of government for the purposes of the union, in the greater extent and variety of purposes for which the union is created, and in the intention of perpetuity. A confederation differs from a personal union in that it is formed not as an accidental result of laws of succession, but by a formal agreement embodied in articles of confederation. Nor does a confederation come to an end as a result of the laws of succession. Confederations are terminated either by dissolution through the secession of the member states or by their fusion into a single sovereign state. A confederation differs from a real union in that the bond which holds the members together is not a common monarch, but an assembly of delegates selected by the member states. A real union is usually formed because the members have internal interests in common ; a confederation is usually formed for defense

and generally lacks certain common organs of government that are characteristic of real unions.

A confederation differs fundamentally from a federation.[1] The former is created by an agreement which is legally an international treaty, and which rests upon the consent of the governments of the member states ; the latter is created by a constitution, which is legally a law, and which rests upon the consent of the people of the state. In a confederation there are as many sovereignties as there are members ; a federation is a single sovereign state. The members of a confederation may legally withdraw from the union ; the secession of a member of a federation is an illegal and revolutionary act. The central government of a confederation is created by the member states, which may destroy it, and widen or narrow its powers. The central government of a federation is created by a constitution, in which its powers are defined ; and the members of the federal union cannot destroy the central government or modify its powers except by the legal method of constitutional amendment. A confederation usually lacks central administrative and judicial organs ; hence it cannot act directly upon individuals, but must leave its resolutions to be enforced by the separate governments of the member states upon their citizens. Only by the use of force on the part of the other members may a recalcitrant member of a confederation be compelled to submit to the central authority. In a federation, the central government makes laws within its constitutional powers, and enforces them, through its own administrative and judicial machinery, upon all the citizens of the entire state. If it chooses, however, the federation may in some cases operate through its individual members or leave to their officials the execution of some of its laws.

The fundamental distinction between a confederation and a federation is the location of sovereignty. If the individual members have the power to determine the extent of their obligations under the articles of union and, if their view be not accepted, to withdraw from the union, then a confederation exists. Where it is constitutionally provided that the central government cannot destroy the political existence of the

[1] See above, Chap. XIV

members of the union or interfere with their legal powers, and that the members cannot destroy the union or interfere with the legal powers of the central government, then a federation exists. Usually each member of a confederation remains a separate international persons. It may enter into treaty arrangements with other states or even make war without affecting the other members of the confederation. War between two members of a confederation would be an international war, not a civil war. However, the pact of union in a particular confederation might confer the control of war and foreign relations upon the central organ. In such case the confederation would possess a limited personality in international law, and the member states would be restricted in their international action as long as they chose to remain in the confederation.

The doctrine of nullification, by which individual members of a union claim the right to refuse obedience to the laws of the central government in case they consider them inconsistent with the terms of the union, has no place in a federation, where the constitutionality of federal law will be determined by a federal tribunal. Even in a confederation nullification cannot be considered a legal right. Since the member states are sovereign, they cannot be compelled to obey a law of the central organ against their will ; but the legal remedy would be secession from the union. As long as a member state remains in the confederation, it is bound to observe the general rules ; and the assertion by a single member of the right to refuse to obey would disrupt the union. The other members of the confederation would not consent to the avoidance by one state of the execution of a part of the general law while they held themselves bound by it. The other members of a confederation would be justified in coercing a member who wished to secure the benefits of the confederation without assuming its obligations. Calhoun, who argued that the United States was a confederation, was logically consistent in claiming for each state the right of secession, but in denying to a single state the right of nullification.[1]

In the process of unification the alliance, the confederation,

[1] See his theory of concurrent majority, in *Discourse on the Constitution and Government of the United States*, pp. 297 ff.

the federation, and the unitary state represent successive stages. The alliance and the confederation are similar in that they are international associations formed by treaty agreements and that sovereignty remains in the individual members. They differ in that the alliance lacks a central organ of government, while the confederation possesses such a body. The federation and the unitary state resemble each other and differ from the alliance and the confederation in that they are created by constitutions, not by treaties, and that they are single sovereign states instead of associations of states. The federation differs from the unitary state in that the members of a federation have a constitutional status ; hence they cannot be destroyed or their powers altered by the central government. In a unitary state all the territorial subdivisions are controlled by the central government, which alone has a constitutional status, the subdivisions having only such powers as the central government chooses to give them by its own law. In an alliance there are as many states, sovereignties, and governments as there are members. In a confederation there are as many states and sovereignties as there are members, but one more government. In a federation there is a single state and a single sovereignty, but a dual constitutional system of government. In a unitary state there is a single state, a single sovereignty, and a single constitutional system of government.

The League of Nations. The ideal of world unity, realized in the Roman Empire and continued during the Middle Ages in the Papacy and the Holy Roman Empire, was shattered during the fourteenth and fifteenth centuries by the rise of national states. While the imperial ideal persisted and attempts were made to secure world dominance by strong rulers, such as Charles V of Spain, Louis XIV and Napoleon in France, and the Hohenzollerns of Germany, all such attempts failed. Defensive combinations were formed against the ambitious states ; and the system of alliances created to maintain the balance of power, that is, to prevent any state from becoming too strong, characterized the international situation during the past three centuries. The principle of the balance of power was recognized as the corner stone of modern international relations in the Peace of Westphalia in 1648, and

was set forth again and again in numerous later treaties. After the Napoleonic Wars an attempt was made to distribute the elements of power in Europe so as to create a condition of equilibrium which should serve as a foundation for peaceful international relations in the future. The Holy Alliance, created in 1815, paved the way for the "concert of Europe," which grew up in the second quarter of the century, in which the great powers of Europe put forward the claim to speak in the name of all Europe. After the middle of the century the "concert of Europe" began to weaken, mainly because of the growth of national spirit and of commercial imperialism; and again the system of alliances to maintain the balance of power was revived. The breakdown of this system in the First World War led to the first successful attempt at world organization in the form of the League of Nations.

The idea of world organization is not new. Frequent proposals have been put forward by eminent thinkers in the past for some form of world association. Some were the utopian dreams of philosophers and pacifists interested in world peace and justice. Among these may by mentioned William Penn's *Essay towards the Present and Future Peace of Europe* (1693); the Abbe' Saint Pierre's *Project for Perpetual Peace* (1712); Kant's *On Perpetual Peace* (1795); and William Ladd's *Essay on a Congress of Nations* (1840). Others were intended to aggrandize the power and prestige of a particular nation. such as the *Grand Design* (1634), attributed by the Duke of Sully to Henry IV. These early projects were simple and highly unified. They were usually intended to be imposed upon the world by autocratic rulers and maintained by their authority. They made no provision for the different kinds of work to be done by a world government, and they gave no attention to the need for adjustment as times and circumstances changed. Practical statesmen paid little attention to these proposals, and no practical results followed.

Many causes contributed to the idea of world organization in recent years, not along the old lines of imperial unity under the dominance of a single state, but rather in accordance with the federal principle. Considerable impetus was given to this idea by the successful federal unions formed in America, in

Germany, and in Switzerland. In many ways the nations of the world were becoming more interdependent Railways, steamships, telegraph, and cables were knitting the world together, and enormous increase in foreign travel and foreign trade involved numerous treaty regulations among states. Joint action for economic purposes was involved in the formation of numerous international administrative unions during the second half of the nineteenth century. The growth of democracy and of popular education led to a growing community of intellectual interests and to the formation of what has been called the "international mind." Many international disputes were settled by arbitration ; and the Hague Conferences of 1899 and 1907 not only were great examples of international conferences, but made some progress, through the establishment of the Hague Court, in providing a legal means for the settlement of international differences. Finally, in the First World War, the group of nations that composed the Allies was the greatest collection of powers that had ever united in a major undertaking, and a widespread public opinion in favor of some form of permanent world association was created. At the close of the war the old balance of power was completely destroyed, and the Allies dominated the diplomatic scene. The temporary league formed for war purposes could be utilized as the basis for a permanent world organization.

When the Peace Conference met, in 1919, it was felt that one of the principal tasks to be undertaken was the formation of a League of Nations. Plans were submitted by President Wilson, by General Smuts, and by the British and the French government. These four projects formed the basis from which the Covenant of the League was finally created, included in the Treaty of Versailles, and submitted to the nations for ratification.[1]

[1] The purposes for which the League was created, as stated in the preamble to the Covenant, were the promotion of international co-öperation and the achievement of international peace and security. These ends were to be accomplished by the acceptance of obligations not to resort to war, by the prescription of open, just, and honorable relations among nations, by the firm establishment of the understandings of international law as the actual rule of conduct among governments, and by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another.

The League was composed originally of the states, except Germany, that had signed the treaty containing the Covenant. At the same time certain friendly neutral states were invited to join. Membership was left open to all the states of the world, including autonomous colonies. Admission, however, depended on a two-thirds vote of the states already members. At first power was concentrated in the hands of the Allied states, to the exclusion of Germany, Austria, Russia, and other states which were not trusted by the victors. Later, Germany and Austria were admitted. The refusal of the United States to enter the League weakened it as an all-inclusive international association. In 1932 the League had fifty-five members, including all the fully independent states of the world except Afghanistan, Brazil, Ecuador, Egypt, Costa Rica, Russia, and the United States. Several petty and semi-dependent states had been refused admission on the ground that they were not competent to carry out the necessary international obligations. Membership in the League might be terminated in several ways. A state which refused to accept a duly adopted amendment to the Covenant automatically ceased to be a member. A state which violated the Covenant of the League might be expelled by a unanimous vote of the other member states. The right of voluntary secession also was recognized. Any state, after two years' notice, might withdraw from the League, provided it had fulfilled all its international obligations and its obligations under the Covenant. The withdrawal of a number of important states marked the decline of the League.

The League of Nations was not a state, nor was it a super-state. It was an organized association of sovereign states, created by treaty, a confederation world-wide in scope. It had a legal personality, it owned property, and had a treasury and a budget of its own. But it had no territory, no citizens or subjects, no army, navy, or police. Its organization consisted of an Assembly, a Council, a Secretariat, and various commissions and committees. The Assembly was composed of representatives from all the member states, each member being permitted to send as many as three delegates. Voting in the Assembly, however, was by states, each member state having one vote, and resolutions of the Assembly required a unani-

mous vote of all members present and voting. The Assembly met annually in September, and on special occasions when necessary. Its jurisdiction included any matter within the authority of the League. It supervised the work of the Council, Secretariat, and other administrative bodies, determined the budget of the League, and elected the judges of the Permanent Court of International Justice and the nonpermanent members of the Council. It might hear disputes referred to it and make recommendations on matters of international coöperation and of world peace. Its powers were mainly advisory, and its chief value was as a forum of international discussion and a clearing house of international public opinion.[1]

The Council of the League was originally intended to consist of nine members, five of whom, Great Britain, France, Italy, Japan, and the United States, should hold the permanent seats, the remaining four to be selected annually by the Assembly.[2] The refusal of the United States to join the League left a permanent seat vacant, which was given to Germany when she was admitted to the League in 1926. At that time the Council was enlarged to fourteen members, nine of whom were temporary members elected by the Assembly. The Council held four regular sessions annually and special sessions when needed. Any member of the League not represented in the Council might send a delegate to its sessions when matters affecting its interests were under discussion. While the principle of equality of states was not recognized in the organization of the Council, it was applied in giving to each member state in the Council one vote, and in requiring unanimous consent for its resolutions. The Council was the most powerful organ of the League. In cases of international dispute the Council acted as a commission of inquiry and conciliation. It drafted the budget of the League, appointed and supervised various international bureaus and commissions, prepared plans for disarmament, received reports from the states that were given mandates over territory taken from

[1] In this body, which was based on the principle of the equality of states, the small nations were able to air their grievances and secure publicity for their international point of view.

[2] The Council was intended to give recognition to the fact of the inequality of states and the preeminence of the great powers.

Germany and Turkey, and made recommendations for the use of coercion to protect the Covenant of the League.

The Secretariat was the permanent administrative agency of the League. It consisted of a Secretary-General, appointed by the Council with the approval of a majority of the Assembly, and a considerable technical and clerical staff. It was the duty of this body to make preliminary examination of questions to be taken up by the Council or the Assembly, to keep the records of the League, including a registration of all treaties, to supply information to member states concerning the League's activities, and to distribute to the public accurate information on many phases of international affairs.

In addition to the Assembly, Council, and Secretariat, there were special organizations and committees that performed numerous functions. One of the most important of these was the International Labor Office, of which all members of the League automatically became members. This organization aimed to maintain fair conditions of labor for men, women, and children, and to promote the moral and social welfare of workers. It maintained an autonomous organization, including a general conference of members and a secretariat controlled by representatives of governments, employers, and employees. Other auxiliary bodies of the League included technical organizations dealing with finance, health, and transit; and advisory committees dealing with military questions, mandates, white-slave traffic, opium, and intellectual coöperation. Various other committees were created from time to time for special purposes. Sometimes these commissions of experts were appointed by the Council of the League, sometimes by the governments of the states separately; and in many cases they secured the coöperation of states that were not members of the League.

The Covenant of the League, being a treaty agreement, could be amended effectively only by unanimous consent. It is true that amendments might be adopted by the consent of the powers who at the time had seats on the Council, acting together with a majority of states in the Assembly; but dissenting members were not bound by such changes, although, if they persisted in their refusal to agree, they lost

membership in the League. This provision gave to the great powers on the Council a veto on amendments, but made it possible that small powers could be compelled to accept amendments or suffer exclusion from the League.

The main influence of the League was exerted by means of indirect coctrol through inquiry, report, mediation, and publicity. In most cases the voluntary action of the state concerned was necessary before action by the League was possible. However, the League might impose penalties in case member states disregarded pledges made in the Covenant to respect the territorial integrity and political independence of other members, to refrain from war at the outbreak of an international dispute and submit the dispute to inquiry by the Council or to arbitration by a court acceptable to both parties, to refrain from war for three months after the report of the Council or the award or the court, or at least not to go to war either to enforce a demand against which the report of the Council was unanimous, the parties to the dispute excepted, or to enforce a demand in opposition to the arbitral award. Penalties included the severance of commercial and financial intercourse and, eventually, military coercion if the other members were willing to exercise such power on the advice of the Council.

The Permanent Court of International Justice. The Covenant of the League[1] authorized the Council to formulate plans for a Permanent Court of International Justice. This provision was included at the instance of the neutral nations and of those who wished to carry further the work of the Hague Conferences and create a real court for the judicial treatment of international disputes. In 1920 the Council appointed a committee of jurists to consider the creation of a court; and its proposals, with some amendments, were adopted by the League and, when ratified by a majority of the members of the League, went into effect in 1921. The Court consisted of fifteen judges, who held office for nine years, and had its seat at the Hague. To be eligible, candidates must be "persons of high moral character, who possess the qualifications required in their respective countries for appointment to

[1] Article XIV.

the highest judicial offices, or jurisconsults of recognized competence in international law." Candidates were nominated to the number of four each by the national groups in the Hague Court of Arbitration and elected by absolute majorities in both the Council and the Assembly of the League, sitting independently of each other. In case the Council and the Assembly failed to agree, a compromise was made by a conference committee ; if this failed, the judges already chosen were given power, if entrusted with this task by the Council, to fill the vacancies by election. By this method of selection the question of state equality in the Court was avoided and transmitted to the electoral bodies.

The jurisdiction of the Court extended over cases of a legal nature involving the interpretation of treaties, any question of international law, infractions of international obligations, and the nature and extent of reparations for the breach of international obligations. Only states, including the autonomous dominions that were members of the League, could be parties before the Court. Originally the Court was limited to cases arising among the members of the League, but later the Court was opened to nonmembers. The jurisdiction of the Court was voluntary when states, by special agreement, decided to submit a dispute to the Court for decision. Its jurisdiction was compulsory when states, by treaty, agreed that disputes arising from such treaty should be submitted to the Court, and when the states that were parties to a dispute had specifically accepted the jurisdiction of the Court as compulsory. When the establishment of the Court was under consideration, the great powers opposed compulsory jurisdiction, but the smaller powers succeeded in introducing a provision by which states wishing to accept the compulsory jurisdiction of the Court could do so by signing a so-called "optional clause" attached to the Protocol adopting the Court's statute. When questions were submitted by the Assembly or Council of the League, the Court was authorized to give advisory opinions. Objection to this feature of the Court's powers was one of the main reasons for the refusal of the United States to adhere.

While the Permanent Court of International Justice was not an integral part of the league of Nations, it was closely con-

nected with it and was dependent upon it in many ways, legally and morally. The Court was set up by the League and was maintained by it. "The forces making for world unity based on peace and coöperation, that have brought together nearly all the civilized nations in the League, have by the same token established the Court as the judicial organ of the nascent world polity. The forces of nationalist intransigence and militarism that might break up the League would in the same motion lay the Court in ruins. A world court became possible only when it was established, and will be possible only so long as maintained, by a world political organization, whose existence alone is welding the pulpy beginnings of international jurisprudence into a solid body of law and fashioning it into the steel frame and concrete foundations of a world polity."[1]

The breakdown of the League of Nations system cannot be attributed solely to the inadequacies or shortcomings of its institutional arrangements. While there were certain "gaps" in the Covenant—the failure to outlaw war or forbid it in all circumstances, the rule of unanimity, and the absence of an international enforcement agency—machinery was available for the peaceful settlement of disputes and for the application of sanctions against a member of the League resorting to war in disregard of its covenants. Rather, the League collapsed because the members upon whom its success depended—Britain, France, and the other European powers - were unwilling to assume their responsibilities under the Covenant, and because the United States, rejecting membership in the organization, refused to assume any responsibility at all.

The first major test of the collective security system established at Geneva occurred when Japan invaded Manchuria in 1931. When presented with the opportunity of applying economic or military sanctions against a member who had committed an act of aggression against another member without having first resorted to one of the peaceful methods of settling disputes provided in the Covenant, the League Powers failed to act. Their moral condemnation of the aggression and their adherence to the American doctrine

[1] C. Howard-Ellis, *The Origin, Structure and Working of the League of Nations*, p. 431.

of the "non-recognition" of territorial aggrandizement had little effect upon Japan, who withdrew from the League and continued the invasion into China. Another opportunity to preserve the collective-security system was lost when Italy was allowed to destroy Ethiopia, a member of the League whose territorial integrity and political independence were guaranteed under the Covenant. This time the Powers resorted to half-hearted economic sanctions, which were doomed to fail in the absence of support from the United States and in view of the fact that Britain and France were at the same time negotiating with Mussolini for an agreement at the expense of Ethiopia. The feeble sanctions did not prevent the conquest of Ethiopia, but they did succeed in driving Italy from the League and into an alliance with Japan and Germany to complete the destruction of the League system. Nor did the League Powers deter Germany from repudiating the provisions of the Treaty of Versailles and the Covenant of the League of Nations. The only response of the League to Germany's violation of the military clause of the Versailles Treaty—introduction of military conscription and remilitarization of the Rhineland—were resolutions condemning such violations. And when Germany joined Italy to destroy the Spanish Republic, another signatory to the Covenant, the League Powers, preferring to work outside the League, created a Committee of "Non-Intervention" to perpetuate the fiction that the civil war in Spain was an internal affair of the Spanish people and therefore beyond the jurisdiction of the authority of the League. The League, weakened by the loss of Ethiopia, China, and Spain, was powerless to save Austria and Czechoslovakia from German absorption. Still working outside the League, the Powers did not even consult that agency when, at Munich, they sacrificed Czechoslovakia in the hope of preserving the last remnants of an order which they themselves had helped to destroy. The collapse of the League system was already an accomplished fact when Germany invaded Poland one year after Munich had brought "peace in our time." This time no attempt was made by the Powers to invoke the now defunct machinery of the League, for it was too late to reconstruct the system of collective security. Alone and unaided by the allies whom

they had sacrificed to the aggressor, the remaining League Powers faced a war of annihilation in which their own security and independence were threatened with destruction.

The United Nations. Although the United States proclaimed its determination to keep out of the European conflict, all illusions of safety and security provided by the geographical separation from Europe and Asia were shattered with the Japanese attack on Pearl Harbor. Faced with a global war, against not only Japan but also Japan's partners in Europe, America joined the Allied Powers who were now determined to put an end to the Fascist threat to world domination. The Allies, being convinced that complete victory over the Axis was essential to their own freedom and independence, came together on January 1, 1942, to form an association of United Nations. In their joint declaration of solidarity the United Nations subscribed to the principles of the Atlantic Charter as set forth by President Roosevelt and Prime Minister Churchill, and pledged themselves to coöperate with the signatory governments by employing all the resources at their command against the members of the Tripartite Pact. During the course of the war, at the periodic conferences of the Big Powers—Casablanca, Quebec, Moscow, Tehran, and Yalta—the Allies began to stress their intention of remaining united in peace as well as in war. After proclaiming that they recognized the necessity of establishing, as the earliest practicable date, a general international organization for the maintenance of international peace and security, the Allied Powers, at Yalta, agreed that a Conference of United Nations would be called to prepare the charter of such an organization along the lines proposed in the informal conversations held by the Big Four at Dumbarton Oaks. With the Dumbarton Oaks proposals as a basis, the United Nations convened at San Francisco to discuss the proposals and to submit amendments and additions. After considerable discussion the Charter of the United Nations was adopted by the fifty delegations and subsequently ratified by their respective governments.

In the preamble to the Charter, the United Nations express their determination "to save succeeding generations from the scourge of war" by uniting their strength to maintain international peace and security. While the main purpose of the

United Nations is the preservation of peace, the members have recognized also the importance of achieving "international coöperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion." The United Nations is neither a world government nor a federation, but an association of sovereign states joined together for the purposes stated in the Charter. To give effect to these purposes there have been established a Security Council, a General Assembly, a Secretariat, an International Court of Justice, an Economic and Social Council, a Trusteeship Council, and a number of subsidiary specialized agencies.

In order to ensure prompt and effective action by the United Nations, its members have conferred upon the Security Council primary responsibility for the maintenance of international peace and security. The organization of the Security Council gives recognition to the dominant position of the Great Powers in the world today. Of the eleven members on the Council, five—China, France, Great Britain, the Soviet Union, and the United States—are permanent members, the six nonpermanent members being elected by the General Assembly for terms of two years. The voting procedure, in accordance with the Yalta formula, accords one vote to each member, but requires seven affirmative votes to reach a decision. In addition, on all matters outside of procedural questions, decisions can be reached only if the five permanent members have voted affirmatively among the seven voters participating. Thus it is possible for one of the Great Powers, provided that power is not a party to the dispute, to veto any proposal before the Security Council. As guardian of the peace, the Security Council may follow one of two courses of action. In the first place, the Council is authorized to investigate any situation or dispute which is likely to endanger the maintenance of international peace and security, and to call upon the parties to such a dispute to settle their differences by pacific means, that is, negotiation, enquiry, mediation, conciliation, arbitration, or judicial settlement. If the Council feels that the continuance of an unsettled dispute is likely to

endanger the maintenance of international peace and security, it may recommend appropriate terms of settlement. Second, the Security Council determines the existence of any "threat to the peace, breach of the peace, or act of aggression," and decides what measures shall be taken to maintain or restore peace. These measures may include the severance of diplomatic and economic relations and, if necessary, operations by air, sea, and land forces of members of the United Nations under the direction of the Security Council's Military Staff Committee. As the United Nations have agreed in advance to accept and carry out the decisions of the Security Council, which they have authorized to act in their behalf, the success of failure of the United Nations will depend, in the final analysis, upon the willingness of the Great Powers on the Council to discharge their responsibilities under the Charter.

The General Assembly is the organ which most truly conforms to the principle of the "sovereign equality of all its Members." It consists of all the United Nations, each member having one vote, although a member may send up to five delegates to the Assembly. Regular annual sessions are provided for, and special sessions may be convoked at the request of the Security Council or a majority of the United Nations. The rules of procedure adopted by the General Assembly provide for six main committees—Political and Security Committee, Economic and Financial Committee, Social, Humanitarian, and Cultural Committee, Trusteeship Committee, Administrative and Budgetary Committee, and Legal Committee—upon which each of the members has a representative and which deal with the agenda. The General Assembly may be regarded as an international forum or a "town meeting of the world." It may discuss any questions within the scope of the Charter and make recommendations to the members and to the Security Council on any such matters. Although the Assembly is empowered to consider the general principles of coöperation in the maintenance of international peace and security, any such question on which action is necessary must be referred to the Security Council. The Assembly also is specifically authorized to initiate studies and make recommendations for the purpose of promoting international coöperation in the political, economic, social, cultural,

educational, and health fields, and for the purpose of assisting in the realization of human rights and fundamental freedoms. Other "important" questions under the jurisdiction of the Assembly include the election of the nonpermanent members of the Security Council, the election of the members of the Economic and Social Council, the election of the nonpermanent members of the Trusteeship Council, the admission of new members to the United Nations, the suspension of the rights and privileges of membership, the expulsion of members, questions relating to the operation of the trusteeship system, and budgetary questions. Decisions of the Assembly on these "important" questions, including its recommendations with respect to the maintenance of international peace and security, are made by a two-thirds majority of the members present and voting. Decisions on other questions are made by a majority of the members present and voting.

The chief administrative officer of the United Nations is the Secretary-General, who is appointed by the General Assembly upon the recommendation of the Security Council for a five-year renewable term. Under the authority of the Secretary-General is the staff of the Secretariat, which is recruited from citizens of United Nations members "on as wide a geographical basis as possible." The Secretary-General is authorized to perform such functions as are entrusted to him by the various organs of the United Nations, to make an annual report to the General Assembly on the work of the organization, and to bring to the attention of the Security Council any matter which may threaten the maintenance of international peace and security. To facilitate the execution of these functions, the Secretariat is divided into a number of departments, including a Department of Security Council Affairs, Economic Affairs, Social Affairs, Trusteeship Affairs, Public Information, Legal Affairs, Conferences and General Services, and Administrative and Financial Services. The permanent staff of the Secretariat provides an element of continuity to the United Nations and serves as a coördinating agency between the various organs and specialized agencies of the organization.

The principal judicial organ of the United Nations is the International Court of Justice, which functions in accordance with an annexed statute based upon the Statute of the Per-

manent Court of International Justice and forming an integral part of the Charter. Each member of the United Nations is *ipso facto* a party to the Statute of the International Court of Justice and undertakes to comply with the decisions of the Court in any case to which it is a party. The Court consists of fifteen judges, elected for nine-year, renewable terms by the General Assembly and Security Council, voting independently. Selection is made from a list of persons nominated by national groups of distinguished jurists. The jurisdiction of the Court comprises all cases which the parties refer to it, and all matters specially provided for in the Charter of the United Nations, and in treaties and conventions in force. In addition, members may adhere to the provision for compulsory jurisdiction of the Court in all legal disputes concerning the interpretation of a treaty, any question of international law, the existence of any fact which, if established, would constitute a breach of an international obligation, and the nature or extent of the reparation to be made for the breach of an international obligation. To ensure that the decisions of the Court are enforced, the Charter provides that if a party fails to comply with a verdict rendered by the Court, the other party has recourse to the Security Council, which may make recommendations or decide upon measures to be taken to give effect to the judgment.

Recognizing that conditions of stability and well-being are necessary for peaceful and friendly relations among nations, the United Nations established an Economic and Social Council to promote international economic, social, cultural, and educational coöperation. The Council, comprising eighteen members selected by the General Assembly, meets at least three times a year to make recommendations to the United Nations upon the subjects under its jurisdiction. The Council also is authorized to draft conventions for submission to the Assembly, to call international conferences on matters falling within its competence, and to coordinate the activities of the various "specialized agencies"—International Labor Office, Food and Agricultural Organization, International Monetary Fund, International Bank of Reconstruction and Development, United Nations Educational, Scientific, and Cultural Organization—by entering into agreements with those agencies.

In regard to non-self-governing territories, the United Nations has established a trusteeship system based upon the principle that the interests of the inhabitants of these territories are paramount. In charge of the system is a Trusteeship Council composed of nations administering trust territories, the permanent members of the Security Council, and an equal number of members, elected by the Assembly, not administering trust territories. The trusteeship system applies to territories held under mandate, territories of the enemy states of the Second World War, and territories voluntarily placed under the system by states responsible for their administration. It is the function of the Trusteeship Council to consider reports submitted by the administering authority, accept petitions and examine them in consultation with the administering authority, and provide for periodic visits to the respective trust territories. The value of the trusteeship system, as far as the dependent peoples are concerned, will depend, in the final analysis upon the good faith of the administering states and the force of world opinion.

The promising beginnings of the United Nations organization have been given a serious setback by the frequent use of the veto by Russia, by the growing friction on many matters between Russia on the one side and the United States and Great Britain on the other, by the creation of a group of satellite states on the western border of Russia, and by the Russian "iron curtain," a policy which shuts off her area of control from the rest of the world. Communist activities, encouraged by Russia in many parts of the earth, create confusion and suspicion. Differences in ideology and in foreign policy divide the world and make united action difficult.

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